

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

D.D., Appellant)	
)	
and)	Docket No. 24-0201
)	Issued: April 23, 2024
U.S. POSTAL SERVICE, PHILLY METRO)	
DISTRICT POST OFFICE, Philadelphia, PA,)	
Employer)	

Appearances:
Aaron Aumiller, Esq., for the appellant¹
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 December 25, 2023 appellant, through counsel, filed a timely appeal from a December 1, 2023 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 met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective September 22, 2022, as she no longer had disability or residuals causally related to her accepted June 26, 2021 employment injury; and (2) whether appellant has met her burden of proof to establish continuing employment-related disability or residuals on or after September 22, 2022, causally related to her accepted June 26, 2021 employment injury.

FACTUAL HISTORY

On June 28, 2021 appellant, then a 33-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on June 26, 2021 she injured her left ankle when walking on a sidewalk while in the performance of duty. She stopped work on June 27, 2021.

On October 12, 2021 OWCP accepted the claim for left ankle sprain. On February 1, 2022 it accepted nondisplaced fracture of cuboid bone of left foot, closed fracture. OWCP paid appellant wage-loss compensation on the supplemental rolls as of August 11, 2021, and on the periodic rolls effective May 22, 2022.

On June 17, 2022 OWCP referred appellant, along with the case record, a statement of accepted facts (SOAF), and a series of questions to Dr. Willie E. Thompson, a Board-certified orthopedic surgeon, for a second opinion examination to determine the nature of appellant's condition, extent of disability, and appropriate treatment recommendations.

In a report dated July 18, 2022, Dr. Thompson noted appellant's history of injury and medical treatment. He reviewed appellant's diagnostic studies and related appellant's physical examination findings. Regarding the left ankle, Dr. Thompson reported that while appellant ambulated with the use of a cane, she had full range of motion of the left ankle and hindfoot, with no redness, no increased warmth, and no edema. Appellant expressed a subjective complaint of tenderness over the anterolateral aspect of the left ankle. Dr. Thompson opined, "The work-related conditions have resolved." He explained, "In fact, I see no evidence which indicates a fracture of the cuboid bone. Imaging studies for fracture of the cuboid are negative. [Appellant] has a normal range of motion [ROM] at the ankle as well as at the hindfoot." Dr. Thompson concluded that she could return to work with no restrictions.

In a July 21, 2022 report, Dr. Paul A. Horenstein, a Board-certified orthopedic surgeon, noted that appellant's left foot revealed no tenderness to palpation, no pain, normal strength and tone, normal foot and ankle movement and ROM, no crepitus, and no known fractures or deformities. He found that appellant had improved ROM, some atrophy of calf muscle, and decreased strength. Dr. Horenstein noted that her foot brace had aided in improved ROM and that, "She has good overall dorsiflexion almost to neutral." He assessed closed nondisplaced fracture of the cuboid of the left foot with routine healing. Dr. Horenstein commented that appellant's overall chronic regional pain syndrome (CRPS) symptoms were much better. He recommended that appellant continue to walk with a brace and engage in physical therapy.

In a notice dated August 17, 2022, OWCP proposed to terminate appellant's wage-loss compensation and medical benefits because she no longer had disability or residuals causally related to her accepted June 26, 2021 employment injury. It found that the weight of the medical evidence rested with Dr. Thompson, who opined that appellant 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.

In a September 1, 2022 report, Dr. Horenstein responded to the notice of proposed termination. He repeated appellant's history of injury and treatment and opined that she was making good and slow improvement and her CRPS had resolved. However, Dr. Horenstein further opined that appellant had developed a contracture of the ankle due to the employment injury. He assessed CRPS and indicated that appellant could not return to work without restrictions and needed ongoing therapy to emphasize strengthening and a molder ankle-foot orthosis.

By decision dated September 22, 2022, OWCP terminated appellant's wage-loss compensation and medical benefits, effective that date, finding that the weight of the medical evidence rested with Dr. Thompson.

A September 26, 2022 report from Dr. Wai Wen Cheng, a chiropractor noted that appellant was treated for pain in the left foot and ankle.

OWCP continued to receive reports from Dr. Horenstein dated October 13, 2022, and February 23, 2023 wherein he noted that appellant had unchanged mild left ankle pain. Dr. Horenstein noted that appellant had closed nondisplaced fracture of the cuboid of the left foot with routine healing, and no objective signs of CRPS. He indicated that appellant's current issue was contracture of her left ankle. Dr. Horenstein concluded that appellant was at maximum medical improvement.

On June 17, 2023 appellant requested reconsideration and submitted additional evidence.

In a May 11, 2023 report, Dr. Horenstein noted appellant's history of injury and treatment. He opined that appellant's injury on June 26, 2021 had resulted in bone contusion, micro trabecular fracture, and ankle sprain. Dr. Horenstein related that appellant had recovered from these injuries, and during the course did develop CRPS, which had resolved as well. Secondly appellant developed ankle contracture. Dr. Horenstein further opined that appellant was unable to perform her full duties as a mail carrier; however, she was capable of light-duty work.

On June 17, 2023 counsel for appellant requested reconsideration.

On July 14, 2023 OWCP declared a conflict in medical opinion between Dr. Hornstein, the attending physician, and Dr. Thompson, the second opinion physician, regarding whether appellant had developed additional conditions due to the accepted injury and whether appellant could return to duty.

OWCP received another report from Dr. Horenstein dated September 11, 2023, wherein he reiterated his prior findings.

On September 21, 2023 OWCP referred appellant, the medical record, a SOAF, and a list of questions to Dr. Stanley Askin, a Board-certified orthopedic surgeon, for an impartial medical examination to resolve the conflict in the medical opinion evidence.

In an October 19, 2023 report, Dr. Askin, the impartial medical examiner (IME), noted appellant's history of injury and medical treatment. He examined appellant and provided measurements for the left calf, noting 37 cm right and 35 cm left; for the ankles just above the malleoli, noting 21 cm right and 21.5 cm left; and for the circumference of her feet around the arches, noting 23 cm right and 23.5 cm left. Dr. Askin found no visible or palpable edema of her left lower extremity, examination of the soles of her feet did not reveal any suggestion of abnormal wear or blistering, and she did not report any pain or tenderness to touch. He noted that appellant "in fact invited me to force her left ankle into dorsiflexion (which I declined to do)." Dr. Askin noted that her left ankle and foot were in an equinus (toe down) position; her feet had mild cava varus alignment (a normal variant) with no visible deformity in either foot; her left ankle was maintained in an equinus position with approximately 15 degrees of plantar flexion with no dorsiflexion past 15 degrees of plantar flexion, with another 10 degrees or so of plantar flexion from the equines position. She had contractility of the ankle dorsiflexors and plantar flexors but did not exert strenuously; she did not report any anesthesia to touch other than under the plantar aspect of the left fifth metatarsal; and that area did not manifest any lack of protective sensation (no ulceration or abnormal skin wear).

Dr. Askin explained that he did not see appellant when the CRPS condition was supposed to be present. He opined that appellant did not have any manifestations of CRPS at the time of his examination. Dr. Askin further explained that her diagnoses were included in the SOAF and he was instructed that the SOAF was binding; however, it was his opinion that her presentation was consistent with factitious disorder. He explained that factitious disorder has a nonsomatic component that is controlling and resulted in appellant having tightness of the left heel cord which was causing her left ankle to be in equinus position. Dr. Askin opined that this was effectively a self-inflicted injury. He explained that because appellant's problem was due to a factitious disorder, surgical intervention would likely not be rewarded by improved functional capability. Dr. Askin related that a simple surgical procedure (heel cord lengthening) would permit her left ankle to regain plantigrade alignment and permit resumption of walking; however, given that appellant had a factitious disorder, there would be concern that she would frustrate any potential benefit that could be gained by a heel cord lengthening. He noted that the heel cord contracture that put her ankle in an equinus position that made walking problematic and she was not currently capable of any position that required significant walking, especially while carrying mail, but was capable of sedentary activities and most light-duty positions. Dr. Askin opined that the accepted conditions had resolved, and that appellant had a disabling condition at the time of the examination that was "consistent with factitious disorder" and "effectively a self-inflicted injury" that was not causally related to the work injury.

By decision dated December 1, 2023, OWCP denied modification of the September 22, 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.³ 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.⁴ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁶ 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.⁷

ANALYSIS -- ISSUE 1

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective September 22, 2022, as she no longer had disability or residuals causally related to her accepted June 26, 2021 employment injury.

In a report dated July 18, 2022, Dr. Thompson, OWCP's referral physician, noted appellant's factual and medical history and her physical examination findings. Regarding the left ankle, he noted that appellant ambulated with the use of a cane, but she had full ROM of the left ankle and hindfoot, with no redness, no increased warmth, and no edema. Dr. Thompson explained there was no evidence which indicated a fracture of the cuboid bone, imaging studies for fracture of the cuboid were negative. He opined that the work-related conditions had resolved.

The Board has reviewed the opinion of Dr. Thompson and finds that it has reliability, probative value, and convincing quality with respect to its conclusion that appellant's work-related conditions had resolved. Dr. Thompson reviewed the factual and medical history and accurately summarized the relevant medical evidence. He explained the medical rationale for his opinion, noting that his examination and the imaging studies revealed no objective evidence of the June 26,

³ See *T.C.*, Docket No. 19-1383 (issued March 27, 2020); *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005).

⁴ 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).

⁵ *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).

⁶ *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).

⁷ *K.W.*, *supra* note 5; see *A.G.*, *id.*; *James F. Weikel*, 54 ECAB 660 (2003).

2021 employment injury.⁸ Accordingly, OWCP properly relied on Dr. Thompson's second-opinion report in terminating her wage-loss compensation and medical benefits.⁹

The remaining evidence submitted prior to OWCP's termination of appellant's compensation is insufficient to overcome the weight accorded to Dr. Thompson as the second-opinion physician.

Dr. Horenstein, in a September 1, 2022 report, noted that he disagreed with the notice of proposed termination. He opined that appellant's CRPS had resolved; however, he opined that appellant had developed a contracture of the ankle. The Board notes that appellant's claim was accepted for nondisplaced fracture of cuboid bone of left foot, closed fracture. While Dr. Horenstein opined that appellant had currently developed a contracture of the ankle, he failed to explain the objective findings supporting this diagnosis and a rationalized opinion explaining how this additional condition was causally related to the accepted June 26, 2021 employment injury.¹⁰

The Board, therefore, finds that OWCP properly terminated appellant's wage-loss compensation and medical benefits for the accepted June 26, 2021 employment injury effective September 22, 2022.¹¹

LEGAL PRECEDENT -- ISSUE 2

Once OWCP properly terminates a claimant's compensation benefits, the burden shifts to appellant to establish continuing disability or residuals after that date causally related to the accepted 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

Section 8123(a) provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a

⁸ See *S.G.*, Docket No. 23-0652 (issued October 11, 2023); *C.W.*, Docket No. 21-0943 (issued February 17, 2023); *Melvina Jackson*, 38 ECAB 443 (1987).

⁹ See *P.B.*, Docket No. 21-0894 (issued February 8, 2023); *E.S.*, Docket No. 20-0673 (issued January 11, 2021); *K.W.*, *supra* note 5; *N.G.*, Docket No. 18-1340 (issued March 6, 2019); *A.F.*, Docket No. 16-0393 (issued June 24, 2016).

¹⁰ *Id.*

¹¹ *D.G.*, Docket No. 17-0608 (issued March 19, 2018).

¹² See *S.G.*, *supra* note 9; *V.W.*, Docket No. 20-0693 (issued June 2, 2021); *D.G.*, Docket No. 19-1259 (issued January 29, 2020); *S.M.*, Docket No. 18-0673 (issued January 25, 2019); *J.R.*, Docket No. 17-1352 (issued August 13, 2018); *Manuel Gill*, 52 ECAB 282 (2001).

¹³ *Id.*

third physician who shall make an examination.¹⁴ Where a case is referred to an IME for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background must be given special weight.¹⁵

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met her burden of proof to establish continuing employment-related disability or residuals on or after September 22, 2022, causally related to her accepted June 26, 2021 employment injury.

Following the termination of her wage-loss compensation and medical benefits appellant continued to submit additional evidence. OWCP received additional reports from Dr. Horenstein. In a May 11, 2023 report, Dr. Horenstein opined that appellant's injury on June 26, 2021 had resulted in bone contusion, micro trabecular fracture, and ankle sprain. He related that appellant had recovered from these injuries, and during the course did develop CRPS, which had resolved as well. Secondarily, appellant developed ankle contracture. Dr. Horenstein concluded that she could only perform light-duty work.

On July 14, 2023 OWCP declared a conflict in the medical opinion evidence between Dr. Horenstein, the attending physician, and Dr. Thompson, the second opinion physician, as to the nature of appellant's conditions causally related to the accepted June 26, 2021 employment injury and appellant's disability status. The Board finds that OWCP properly referred appellant to Dr. Askin, the IME, to resolve the conflict, pursuant to 5 U.S.C. § 8123(a).

In his report dated October 19, 2023, Dr. Askin reviewed appellant's history of injury and the medical evidence. The IME examined appellant and noted essentially normal physical examination findings. He related that he found no objective evidence of residuals due to the accepted employment injury. Dr. Askin opined that the accepted conditions had resolved. He noted that appellant had a disabling condition at the time of the examination; however, he opined that the condition was "consistent with factitious disorder" and "effectively a self-inflicted injury" that was not causally related to the work injury. He explained that factitious disorder has a nonsomatic component that is controlling and resulted in appellant having tightness of the left heel cord which was causing her left ankle to be in equinus position.

The Board finds that the opinion of the IME, Dr. Askin, is reasoned and based on a complete factual and medical history. Dr. Askin accurately summarized the relevant evidence, provided findings on examination, and reached conclusions regarding appellant's condition which comported with his findings.¹⁶ Consequently, his opinion is entitled to the special weight of the

¹⁴ 5 U.S.C. § 8123(a); *see L.S.*, Docket No. 23-0730 (issued October 4, 2023); *B.T.*, Docket No. 21-0388 (issued October 14, 2021); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

¹⁵ 20 C.F.R. § 10.321; *B.M.*, Docket No. 21-0101 (issued December 15, 2021); *T.D.*, Docket No. 17-1011 (issued January 17, 2018); *James P. Roberts*, 31 ECAB 1010 (1980).

¹⁶ *See P.H.*, Docket No. 21-1072 (issued May 18, 2022); *E.A.*, Docket No. 18-1798 (issued December 31, 2019); *A.M.*, Docket No. 18-1243 (issued October 7, 2019).

evidence and establishes that appellant had no continuing disability or residuals due to her accepted employment injury.¹⁷

Appellant submitted additional reports from Dr. Horenstein. However, Dr. Horenstein was on one side of the conflict that was resolved by the IME, Dr. Askin. A medical report from a physician on one side of a conflict resolved by an IME is generally insufficient to overcome the special weight accorded the report of an IME or to create a new conflict.¹⁸ As such, the Board finds that the additional reports from Dr. Horenstein are insufficient to overcome the special weight accorded to the opinion of the IME, or to create a new conflict in medical opinion regarding appellant's alleged continuing disability from work.¹⁹

OWCP received a September 26, 2022 report from Dr. Weng, a chiropractor; however, this report did not contain a diagnosis of subluxation based on the results of an x-ray. As such, the report from a chiropractor is of no probative value as he is not considered a physician for purposes of FECA in the absence of a diagnose of subluxation.²⁰

As the medical evidence is insufficient to establish continuing disability or residuals on or after September 22, 2022, due to the accepted employment injury, the Board finds that appellant has not met her burden of proof.

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 that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective September 22, 2022; as she no longer had disability or residuals causally related to her accepted June 26, 2021 employment injury. The Board further finds that appellant has met not her burden of proof to establish continuing employment-related disability or residuals on or after September 22, 2022, causally related to her accepted June 26, 2021 employment injury.

¹⁷ *D.M.*, Docket No. 18-0746 (issued November 26, 2018); *Melvina Jackson*, 38 ECAB 443 (1987).

¹⁸ *See M.G.*, Docket No. 23-0674 (issued October 3, 2023); *P.T.*, Docket No. 22-0841 (issued January 26, 2023); *N.U.*, Docket No. 20-1022 (issued January 25, 2022).

¹⁹ *Id.*

²⁰ 5 U.S.C. § 8101(2) of FECA provides as follows: "(2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. The term physician includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the secretary." *See G.P.*, Docket No. 23-1133 (issued March 19, 2024); *George E. Williams*, 44 ECAB 530 (1993); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

ORDER

IT IS HEREBY ORDERED THAT the December 1, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 23, 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