

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

_____)	
G.C., Appellant)	
)	
and)	Docket No. 23-0663
)	Issued: February 22, 2024
U.S. POSTAL SERVICE, SOUTH)	
HACKENSACK POST OFFICE,)	
Hackensack, NJ, Employer)	
_____)	

Appearances:
James D. Muirhead, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On April 6, 2023 appellant, through counsel, filed a timely appeal from an October 31, 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 May 20, 2021, as she no longer had disability or residuals due to her accepted December 6, 2019 employment injury; and (2) whether appellant has met her burden of proof to establish continuing disability or residuals on or after May 20, 2021, causally related to her accepted December 6, 2019 employment injury.

FACTUAL HISTORY

On December 6, 2019 appellant, then a 33-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on December 6, 2019 she fell when descending stairs, striking the back of the left side of her head while in the performance of duty. She stopped work on December 6, 2019. OWCP accepted appellant's claim for concussion without a loss of consciousness and postconcussive syndrome. It paid wage-loss compensation on the supplemental rolls, effective January 21, 2020, and on the periodic rolls, effective May 24, 2020. By decision dated May 12, 2020, OWCP expanded the acceptance of appellant's claim to include cervical sprain and cervical strain.

On January 6, 2021 OWCP referred appellant, along with the medical record, a statement of accepted facts (SOAF), and a series of questions to Dr. Lynne Carmickle, a Board-certified neurologist, for a second-opinion evaluation regarding the status of appellant's December 6, 2019 employment injury. In a report dated February 10, 2021, Dr. Carmickle noted that her review of the medical record, including the SOAF, and indicated that appellant continued to complain of neck pain and tingling into both hands. On physical examination, she observed range of motion findings of forward flexion to 40 degrees, extension to 45 degrees, right lateral flexion to 30 degrees, and right lateral rotation to 60 degrees. Dr. Carmickle reported that appellant's range of motion appeared in excess of this and normal during the course of the examination. She indicated that appellant reported pain on minimal superficial palpation throughout the cervical area. Neurological examination revealed no sign of atrophy or disuse, and normal motor and sensory examination. Dr. Carmickle indicated that neuropsychiatric evaluation showed normal cognition and no evidence of perceptual disturbances. In response to OWCP's inquiries, she reported that appellant had no objective findings of the accepted conditions listed in the SOAF. Dr. Carmickle noted that there were no sensory findings, reflex asymmetry, or focal weakness on examination, and no neurological deficits or loss of function. She opined that appellant could return to full-duty work. Dr. Carmickle completed a work capacity evaluation form (Form OWCP-5c), which indicated that appellant could return to her usual job without restrictions.

On February 22, 2021 OWCP issued a notice proposing to terminate appellant's wage-loss compensation and medical benefits based on Dr. Carmickle's opinion that appellant no longer had disability or residuals due to her December 6, 2019 employment injury. It afforded her 30 days to submit additional evidence or argument, in writing, if she disagreed with the proposed termination.

In a report dated February 16, 2021, Dr. Aditya Patel, a Board-certified anesthesiologist and pain management specialist, indicated that appellant reported no improvement from an intra-articular injection on February 3, 2021. On examination of her cervical spine, he observed moderate tenderness over cervical spines, paraspinal, and trapezius areas and decreased range of

motion. Dr. Patel diagnosed cervicalgia, other cervical disc disorders, and bilateral shoulder pain. He also indicated that appellant had possible unrecognized shoulder injuries that should be included in her workers' compensation case.

In a report dated March 11, 2021, Dr. Howard M. Baruch, a Board-certified orthopedic surgeon, indicated that appellant was referred to him for bilateral shoulder symptoms. He described that in December 2019 she fell backwards and hit her head, neck, and possibly left shoulder. Dr. Baruch recounted appellant's complaints of bilateral shoulder pain localized to bilateral anterior and lateral shoulder. Examination of appellant's left shoulder revealed moderate tenderness to palpation of the acromioclavicular (AC) joint and cervical paraspinal region. Cross arm and impingement tests were positive. Dr. Baruch diagnosed bilateral shoulder joint pain and bilateral AC closed dislocation.

In a report and work status note dated April 27, 2021, Dr. Patel indicated that appellant was evaluated for follow up of neck and left shoulder pain. He described the December 6, 2019 employment injury and provided examination findings. Dr. Patel diagnosed cervical spondylolysis and left shoulder bursitis. He opined that the diagnosed conditions of cervical sprain, possible cervical radiculopathy, possible cervicogenic headache, possible cervical myofascial pain with trigger point, and left shoulder pain were related to the employment injury. Dr. Patel indicated that appellant should not work and checked a box marked "Yes" indicating that the injury or illness was the result of a work-related incident.

By decision dated May 19, 2021, OWCP finalized the notice of proposed termination of appellant's wage-loss compensation and medical benefits, effective May 20, 2021. It found that the weight of medical evidence rested with Dr. Carmickle, who indicated in a February 10, 2021 report that appellant no longer had disability or residuals due to her accepted December 6, 2019 employment injury.

On May 24, 2021 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. A telephonic hearing was held on September 1, 2021.

Appellant submitted reports and work status notes dated May 20 and July 1, 2021 by Dr. Baruch who indicated that there had been no significant change in her current neck and left shoulder pain. Dr. Baruch provided examination findings and diagnosed cervical spondylolysis and left shoulder bursitis. He reported that "[a]ll below diagnosis is related to work injury" and noted diagnoses of left shoulder pain, cervical sprain/strain, possible cervical radiculopathy vs. cervical facet syndrome vs. cervical discogenic pain, possible cervicogenic headache, and possible cervical myofascial pain with trigger point. Dr. Baruch recommended that appellant continue with physical therapy and medication. He checked a box marked "Yes" indicating that her injury was the result of a work-related incident and indicated that she should not work.

In an attending physician's report (Form CA-20) dated May 21, 2021, Dr. Patel described the December 6, 2019 employment injury and noted diagnoses of left shoulder joint pain, right shoulder joint pain, and cervicalgia. He checked a box marked "Yes" indicating that appellant's condition was caused by the described employment activity. Dr. Patel reported that she was still receiving medical treatment and opined that she remained totally disabled.

In a letter dated September 28, 2021, Dr. Patel indicated that appellant remained under his care for neck and left shoulder injuries sustained on December 6, 2019 when she fell down while working. He reported that she “continues to suffer from neck pain, headache, and right upper extremity radicular symptoms which in my opinion are causally related to the injury sustained while working on [December 6, 2021].” Dr. Patel explained that objective and diagnostic findings correlated with appellant’s subjective complaints. He opined that she was not at maximum medical improvement and recommended that she be referred for orthopedic spine surgical evaluation.

By decision dated October 26, 2021, OWCP’s hearing representative affirmed, in part, and set aside, in part, the May 19, 2021 decision. He found that OWCP had met its burden of proof to terminate appellant’s wage-loss compensation and medical benefits, effective May 20, 2021. However, the hearing representative set aside the decision, finding that, a conflict in medical evidence existed between Dr. Baruch, appellant’s treating physician, and Dr. Carmickle, the second opinion examiner, regarding whether appellant had continuing disability and residuals after May 20, 2021 due to her accepted December 6, 2019 employment injury.

OWCP subsequently referred appellant, the medical record, an updated SOAF, and a series of questions to Dr. Paul Teja, an osteopath Board-certified in orthopedic surgery, for an impartial medical examination and opinion in order to resolve the conflict in medical opinion regarding the nature and extent of her December 6, 2019 employment injury.

Appellant submitted a May 3, 2021 left shoulder magnetic resonance imaging scan, which showed intact AC joint and unremarkable ligaments, no evidence of rotator cuff or labral tear, and mild subacromial-subdeltoid bursitis.

In a March 15, 2022 report, Dr. Teja described that on December 6, 2019 appellant slipped and fell onto the back of her head and neck. He noted his review of the medical record, including the SOAF, and indicated that her claim was accepted for concussion, postconcussional syndrome, cervical strain, and cervical sprain. Dr. Teja recounted appellant’s complaints of ongoing cervical pain radiating down the left arm, with occasional numbness and tingling, with shoulder pain. He noted that she stated she had not fully recovered from the December 6, 2019 employment injury. On physical examination, Dr. Teja observed tenderness to the left paraspinal muscles of the cervical spine to palpation and intact sensation in the bilateral upper extremities. Range of motion testing showed flexion to 5 degrees, extension to 35 degrees, left lateral flexion to 30 degrees, right lateral flexion to 20 degrees, and left and right rotation to 45 degrees. Dr. Teja reported that examination of the left shoulder showed no swelling or effusion, no pain on range of motion, and negative impingement testing. Range of motion testing showed abduction to 90 degrees, forward flexion to 115 degrees, extension to 40 degrees, external rotation to 90 degrees, and internal rotation to 60 degrees.

In response to OWCP’s questions, Dr. Teja reported that appellant had no current diagnosed conditions causally related to the December 6, 2019 employment injury. He explained that she had limited range of motion on examination, but range of motion was a truly subjective, rather than objective findings, since it was done at the patient’s own volition. Dr. Teja noted that appellant had normal neurovascular examination with bilateral upper extremities and no objective medical evidence of any cervical radiculopathy. He opined that, from an orthopedic standpoint, she had fully recovered from the effects of the December 6, 2019 employment injury. Dr. Teja

also reported that, based on his clinical examination, appellant had no other diagnoses that could be attributed to her work-related condition on December 6, 2019. He concluded that she was capable of working full time without restrictions. Dr. Teja completed a Form OWCP-5c, which indicated that appellant was capable of working her usual job without restrictions.

By decision dated March 30, 2022, OWCP found that appellant did not have continued disability or residuals from work as a result of the accepted December 6, 2019 employment injury and indicated that her wage-loss compensation and medical benefits had been terminated, effective May 20, 2021. It found that the special weight of the medical evidence rested with the March 15, 2022 report of Dr. Teja, the independent medical examiner (IME).

On April 20, 2022 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on August 18, 2022.

By decision dated October 31, 2022, OWCP's hearing representative affirmed the March 30, 2022 decision.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it bears the burden of proof to justify termination or modification of benefits.³ It may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.⁴ OWCP's 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 the employee 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 May 20, 2021, as she no longer had disability or residuals causally related to her accepted December 6, 2019 employment injury.

³ *A.D.*, Docket No. 18-0497 (issued July 25, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁴ *A.G.*, Docket No. 18-0749 (issued November 7, 2018); *see also I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

⁵ *R.R.*, Docket No. 19-0173 (issued May 2, 2019); *T.P.*, 58 ECAB 524 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

⁶ *L.W.*, Docket No. 18-1372 (issued February 27, 2019); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁷ *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *A.P.*, Docket No. 08-1822 (issued August 5, 2009).

In a February 10, 2021 report, Dr. Carmickle, OWCP's second opinion examiner, noted her review of the medical record, including the SOAF. She provided examination findings and reported that appellant had no objective findings of the accepted conditions listed in the SOAF. Dr. Carmickle indicated that there were no sensory findings, reflex asymmetry, or focal weakness on examination, and no neurological deficits or loss of function. She concluded that appellant was no longer disabled causally related to the accepted December 6, 2019 employment injury and released appellant to full duty.

The Board has reviewed the opinion of Dr. Carmickle and finds that it has reliability, probative value, and convincing quality with respect to the relevant issue of continuing work-related disability and residuals. Dr. Carmickle provided a thorough factual and medical history and summarized the relevant medical evidence. She provided medical rationale for her opinion by explaining that appellant did not have objective evidence of her accepted conditions related to her December 6, 2019 employment injury.⁸ The Board finds, therefore, that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Carmickle, OWCP's referral physician.

In support of her claim, appellant submitted reports dated February 16 through September 28, 2021 from Dr. Patel, who opined that her cervical sprain, possible cervical radiculopathy, possible cervicogenic headache, possible cervical myofascial pain with trigger point, and left shoulder pain were related to the December 6, 2019 employment injury. Dr. Patel indicated that she should not work. In an April 27, 2021 report and May 21, 2021 Form CA-20, he checked a box marked "Yes" indicating that appellant's condition was caused by the described employment activity. The Board, however, has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale.⁹

In reports dated March 11 through July 1, 2021, Dr. Baruch provided examination findings and noted diagnoses of left shoulder pain, cervical sprain/strain, possible cervical radiculopathy vs. cervical facet syndrome vs. cervical discogenic pain, possible cervicogenic headache, and possible cervical myofascial pain with trigger point. He opined that these conditions were related to the employment injury and checked a box marked "Yes" indicating that appellant's injury was the result of a work-related incident. However, 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.¹⁰

The Board thus finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective May 20, 2021.¹¹

⁸ *A.V.*, Docket No. 23-0230 (issued July 28, 2023); *G.S.*, Docket No. 22-0697 (issued November 28, 2022).

⁹ *See S.P.*, Docket No. 23-0537 (issued October 31, 2023); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

¹⁰ *Id.*

¹¹ *See S.G.*, Docket No. 23-0652 (issued October 11, 2023).

LEGAL PRECEDENT -- ISSUE 2

When OWCP properly terminates wage-loss compensation and medical 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 a causal relationship between continuing residuals and/or disability and the accepted employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background, supporting such a causal relationship.¹³

Section 8123(a) of FECA provides that, if there is a disagreement between the physician making the examination for the United States and the physician of an employee, the Secretary shall appoint a third physician (known as a referee physician or IME) who shall make an examination.¹⁴ This is called an impartial medical examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.¹⁵ When a case is referred to an IME for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.¹⁶

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met her burden of proof to establish continuing disability or residuals on or after May 20, 2021, causally related to her accepted December 6, 2019 employment injury.

In a March 15, 2022 report, Dr. Teja noted his review of the medical record, including the SOAF, and indicated that appellant's claim was accepted for concussion, postconcussional syndrome, cervical strain, and cervical sprain. He described the December 6, 2019 employment injury and recounted her complaints of ongoing cervical pain radiating down the left arm. On examination, Dr. Teja observed tenderness to the left paraspinal muscles of the cervical spine to palpation and intact sensation in the bilateral upper extremities. In response to OWCP's questions, he reported that appellant had no current diagnosed conditions causally related to the December 6, 2019 employment injury. Dr. Teja explained that she had normal neurovascular examination with bilateral upper extremities and no objective medical evidence of any cervical radiculopathy. He

¹² *K.M.*, Docket No. 21-1351 (issued April 28, 2022); *E.J.*, Docket No. 20-0013 (issued November 19, 2020); *Manuel Gill*, 52 ECAB 282 (2001).

¹³ *See V.D.*, Docket No. 22-0123 (issued April 20, 2023); *C.L.*, Docket No. 18-1379 (issued February 3, 2019); *T.M.*, Docket No. 08-0975 (issued February 6, 2009).

¹⁴ 5 U.S.C. § 8123(a); *B.T.*, Docket No. 21-0388 (issued October 14, 2021); *L.T.*, Docket No. 18-0797 (issued March 14, 2019); *S.T.*, Docket No. 08-1675 (issued May 4, 2009); *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 *K.D.*, Docket No. 19-0281 (issued June 30, 2020); *J.W.*, Docket No. 19-1271 (issued February 14, 2020); *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001); *James P. Roberts*, 31 ECAB 1010 (1980).

also reported that, based on his clinical examination, appellant had no other diagnoses that could be attributed to her work-related condition on December 6, 2019. Dr. Teja concluded that she was capable of working full time without restrictions.

The Board finds that Dr. Teja's opinion is reasoned and based on a complete factual and medical history. Dr. Teja accurately summarized the relevant evidence, provided findings on examination, and reached conclusions regarding appellant's condition which comported with his findings.¹⁷ Consequently, his opinion is entitled to the special weight of the evidence and establishes that she no longer had disability or residuals due to her accepted December 6, 2019 employment injury.¹⁸

As the medical evidence of record is insufficient to establish continuing disability or residuals on or after May 20, 2021 causally related to the accepted December 6, 2019 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 has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective May 20, 2021, as she no longer had disability or residuals due to her accepted December 6, 2019 employment injury. The Board also finds that she has met her burden of proof to establish continuing disability or residuals on or after May 20, 2021, causally related to her accepted December 6, 2019 employment injury.

¹⁷ 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).

¹⁸ See *L.S.*, Docket No. 23-0730 (issued October 4, 2023); *D.M.*, Docket No. 18-0746 (issued November 26, 2018); *Melvina Jackson*, 38 ECAB 443 (1987).

ORDER

IT IS HEREBY ORDERED THAT the October 31, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 22, 2024
Washington, DC

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

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

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