

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

D.V., Appellant)	
)	
and)	Docket No. 23-1000
)	Issued: February 23, 2024
U.S. POSTAL SERVICE, PASCO SERVICE & DELIVERY CENTER, Pasco, WA, Employer)	
)	

Appearances:
Howard L. Graham, 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 July 22, 2023 appellant, through counsel, filed a timely appeal from a March 14, 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.³

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.*

³ The Board notes that, following the March 14, 2023 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedures* 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.*

ISSUES

The issues are: (1) whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective August 22, 2022, as she no longer had disability or residuals causally related to the accepted July 17, 1998 employment injury; and (2) whether appellant has met her burden of proof to establish continuing employment-related disability or residuals, on or after August 22, 2022, due to her accepted July 17, 1998 employment injury.

FACTUAL HISTORY

OWCP accepted that on July 17, 1998 appellant, then a 42-year-old mail handler, sustained bilateral carpal tunnel syndrome, left cubital tunnel syndrome, and bilateral elbow tendinitis due to factors of her federal employment including lifting heavy bags and pushing. Following intermittent periods of full duty and modified duty, she left the employing establishment in March 2000. OWCP paid appellant wage-loss compensation on the supplemental rolls, effective July 26, 2007. It placed her case on the periodic rolls effective May 11, 2008. OWCP authorized bilateral carpal tunnel and cubital tunnel (ulnar nerve) releases, performed on the left on July 26, 2007, and on the right on October 25, 2007.

In a July 13, 2009 report, Dr. Wing C. Chau, a Board-certified physiatrist, recounted a history of injury and treatment. On examination, he observed negative Tinel's signs at the bilateral wrists and elbows. Dr. Chau obtained an electromyogram and nerve conduction velocity (EMG/NCV) study of the bilateral upper extremities, which demonstrated "fairly normal" results "without further evidence for compressive neuropathy at the wrists or elbows."

Dr. Chau provided periodic reports dated from September 25, 2009 through October 31, 2017, noting continued symptoms of bilateral carpal and cubital tunnel syndromes. He prescribed medication.

In an October 30, 2013 report, Dr. Cheryl Hipolito, Board-certified in family practice, recounted a history of injury and treatment. On examination, she noted no abnormalities of the bilateral upper extremities. Dr. Hipolito diagnosed degenerative disc disease.

Dr. Mark Hoitink, Board-certified in family practice, submitted periodic medical reports dated from December 22, 2017 through April 22, 2019 diagnosing bilateral carpal and cubital tunnel syndromes with consequential bilateral complex regional pain syndrome (CRPS) of the upper extremities, and bilateral reflex sympathetic dystrophy of the upper extremity. On March 5 and April 22, 2019 he opined that appellant's upper extremity conditions remained employment related and disabling.

Beginning on June 17, 2019, appellant received pain management by Dr. Jean You, a Board-certified physiatrist, who recounted a history of bilateral cubital and carpal tunnel syndrome related to repetitive hand motion while at work on July 17, 1998. Dr. You prescribed medication.

In a January 15, 2021 report, Dr. Paulo J. Cancado, a Board-certified psychiatrist and neurologist, recounted appellant's complaints of right elbow pain, with numbness and paresthesias of the right hand. He recounted her surgical history. Dr. Cancado noted that a November 9, 2020

EMG/NCV study demonstrated moderate right carpal tunnel syndrome, and mild ulnar neuropathy at the right elbow, without evidence of peripheral neuropathy or right-sided cervical radiculopathy.

OWCP subsequently expanded the acceptance of the claim to include bilateral ulnar nerve lesions, bilateral carpal tunnel syndrome, and other bilateral synovitis and tenosynovitis.

In reports dated April 19, 2022, Dr. Hipolito recounted appellant's symptoms of arthralgias of the hand, wrist, and forearm, surgical scars of the bilateral wrists, decreased range of motion of the bilateral wrists, decreased reflexes in the bilateral upper extremities, and abnormal monofilament test results. She diagnosed bilateral carpal tunnel syndrome with onset in 1997 through 1998 while working at the employing establishment, bilateral cubital tunnel syndrome, and history of bilateral median nerve decompression.

On May 5, 2022 OWCP referred appellant, along with the medical record, and a statement of accepted facts (SOAF), to Dr. Moon H. Lee, a Board-certified orthopedic surgeon, for a second opinion examination regarding the nature and extent of the accepted occupational conditions and appellant's work capacity. The April 13, 2022 SOAF related that appellant's claim had been accepted for bilateral carpal tunnel syndrome, left cubital tunnel syndrome, and bilateral elbow tendinitis. The SOAF listed "[o]ther pertinent medical treatment" including two abdominal procedures in 1980 and 1989, bilateral carpal tunnel releases in 2007, and bilateral cubital tunnel surgery in 2007.

In a June 8, 2022 report, Dr. Lee recounted a history of injury and treatment, and reviewed the medical record and SOAF. On examination, he observed "significant pain behavior, symptom magnification and non-anatomical findings," including absence of positional, light touch, pinprick, and vibratory sensation distal to the bilateral elbows. Dr. Lee also found no obvious swelling or effusion of the wrists or elbows, bilaterally negative Tinel's sign at the elbow, bilaterally negative Phalen's and Durkan's signs at the wrist, and mild give-way weakness. He diagnosed bilateral carpal tunnel syndrome, bilateral elbow tendinitis, and left cubital tunnel syndrome. Dr. Lee opined that the accepted bilateral carpal tunnel syndrome, bilateral elbow tendinitis, and left cubital tunnel syndrome had resolved prior to the July 13, 2009 EMG/NCV study, which did not demonstrate compressive neuropathy at the left elbow or bilateral wrists. Additionally, there were no objective clinical findings of bilateral elbow tendinitis. Dr. Lee returned appellant to full-duty work as a mail handler without restrictions.

In a June 27, 2022 report, Dr. You diagnosed CRPS of the bilateral upper extremities. She prescribed analgesic medication.

In a notice dated July 14, 2022, OWCP proposed to terminate appellant's wage-loss compensation and medical benefits as the weight of the evidence established that she no longer had any employment-related disability or residuals due to her July 17, 1998 employment injury. It afforded her 30 days to submit additional evidence or argument if she disagreed with the proposed termination.

By decision dated August 22, 2022, OWCP finalized the notice of proposed termination of appellant's wage-loss compensation and medical benefits, effective that date. It found that Dr. Lee's opinion represented the weight of the evidence and established that appellant no longer had disability or residuals due to her accepted July 17, 1998 employment injury.

On October 6, 2022 appellant, through counsel, requested reconsideration.

OWCP received a September 9, 2022 magnetic resonance imaging (MRI) scan of the right hand, which demonstrated an eight-millimeter diameter ganglion emanating from the midcarpal capitulate articulation, extending into the deep portion of the carpal tunnel, perhaps contributing to “carpal tunnel-like” symptoms, dorsal tilt of the lunate relative to the capitate, and a small perforation of the triangular fibrocartilage.

In a September 19, 2022 report, Dr. Hipolito diagnosed bilateral carpal tunnel syndrome, and bilateral ulnar nerve entrapment at the elbow. She noted that Dr. You had attributed appellant’s symptoms to age and diabetes, and not the accepted conditions. Dr. Hipolito referred appellant for a neurologic consultation and diagnostic studies.

An October 16, 2022 MRI scan of the right elbow demonstrated moderate tendinosis of the common extensor origin with an intrasubstance tear, mild tendinosis of the common flexor origin with a small intrasubstance tear, mildly increased signal in the ulnar nerve at the level of the cubital tunnel that might represent ulnar neuropathy, and trace effusion.

A November 10, 2022 EMG/NCV study of the bilateral upper extremities demonstrated “bilateral mild recurrent carpal tunnel syndrome without evidence of other significant peripheral neuropathy or cervical radiculopathy.”

By decision dated March 14, 2023, OWCP denied modification of the August 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 benefits.⁴ It may not terminate compensation without establishing either that the disability has ceased or that it is 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

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁷ To terminate authorization for medical treatment, OWCP

⁴ *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).

⁵ *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).

⁶ *R.R.*, Docket No. 19-0173 (issued May 2, 2019); *T.P.*, 58 ECAB 524 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

⁷ *L.W.*, Docket No. 18-1372 (issued February 27, 2019); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

must establish that the employee no longer has residuals of an employment-related condition, which require further medical treatment.⁸

ANALYSIS -- ISSUE 1

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective August 22, 2022.

OWCP referred appellant to Dr. Lee for a second opinion evaluation to determine the status of her accepted conditions and work capacity. In his June 8, 2022 report, Dr. Lee opined that the accepted work-related conditions had resolved and that appellant could return to her date-of-injury position. The April 13, 2022 SOAF presented to Dr. Lee noted that OWCP had accepted bilateral carpal tunnel syndrome, left cubital tunnel syndrome, and bilateral elbow tendinitis, but failed to include appellant's accepted bilateral ulnar nerve lesions and other bilateral synovitis and tenosynovitis.

OWCP's procedures provide that when an OWCP district medical adviser, second opinion specialist, or referee physician renders a medical opinion based on a SOAF, which is incomplete or inaccurate, or does not use the SOAF as the framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether.⁹ OWCP did not provide Dr. Lee with a complete SOAF as it did not identify all of appellant's accepted conditions or distinguish the authorized surgical procedures from nonoccupational procedures. As Dr. Lee's opinion was not based on a complete SOAF, it is of diminished probative value.¹⁰ The Board thus finds that OWCP failed to meet its burden of proof.¹¹

CONCLUSION

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective August 22, 2022.

⁸ A.V., Docket No. 23-0230 (issued July 28, 2023); R.P., Docket No. 17-1133 (issued January 18, 2018); A.P., Docket No. 08-1822 (issued August 5, 2009).

⁹ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3 (October 1990).

¹⁰ *Id.* See also B.C., Docket No. 20-1672 (issued February 8, 2023).

¹¹ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the March 14, 2023 decision of the Office of Workers' Compensation Programs is reversed.

Issued: February 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