

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

C.M., Appellant	)	
	)	
and	)	<b>Docket No. 23-1156</b>
	)	<b>Issued: February 27, 2024</b>
U.S. POSTAL SERVICE, TAYLORSVILLE	)	
POST OFFICE, Taylorsville, NC, Employer	)	
	)	

*Appearances:* *Case Submitted on the Record*  
*Erik Blowers, Esq.*, for the appellant<sup>1</sup>  
*Office of Solicitor*, for the Director

**DECISION AND ORDER**

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

**JURISDICTION**

On September 11, 2023 appellant, through counsel, filed a timely appeal from an August 16, 2023 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 an 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.*

## **ISSUE**

The issue is whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective February 21, 2023, as she no longer had disability or residuals causally related to her accepted June 2, 2008 employment injury.

## **FACTUAL HISTORY**

On June 5, 2008 appellant, then a 65-year-old rural carrier filed a traumatic injury claim (Form CA-1) alleging that on June 2, 2008 she sustained injuries when her postal vehicle collided with another vehicle while in the performance of duty. She stopped work on June 2, 2008. OWCP accepted the claim for traumatic pneumothorax without open wound into thorax and subsequently expanded the acceptance of appellant's claim to include closed fracture of the right 4<sup>th</sup> and 5<sup>th</sup> ribs, chest wall contusion, closed fracture of right ramus, right long and ring finger sprain, and right leg osteoarthritis. On December 15, 2012 appellant returned to part-time, modified-duty for two hours per day. OWCP paid her wage-loss compensation for partial disability on the periodic rolls, effective January 13, 2013.

On May 18, 2010 appellant underwent an OWCP-authorized total right knee arthroplasty, performed by Dr. Jason P. Norcross, a Board-certified orthopedic surgeon.

On December 14, 2010 appellant underwent a total left knee arthroplasty, also performed by Dr. Norcross.

On June 16, 2011 OWCP referred appellant, along with a statement of accepted facts (SOAF), the medical record, and a series of questions to Dr. William Lehman, a Board-certified orthopedic surgeon, for a second opinion regarding the status of her work-related injury.

In a July 28, 2011 report, Dr. Lehman noted his examination findings and opined that appellant's bilateral knee osteoarthritis was aggravated by the June 2, 2008 motor vehicle accident.

On November 30, 2022 OWCP referred appellant, along with the medical record, a SOAF, and a series of questions, and to Dr. Chason S. Hayes, a Board-certified orthopedic surgeon, for a second opinion evaluation regarding the status of her accepted conditions and current work restrictions. It specifically requested that he list all current diagnoses and provide a well-rationalized explanation to confirm or negate causal relationship between any additional conditions found and the accepted employment factors.

In a report dated December 15, 2022, Dr. Hayes noted his review of the medical record, including the SOAF, and appellant's accepted conditions of traumatic pneumothorax, closed fracture of the right 4<sup>th</sup> and 5<sup>th</sup> ribs, chest wall contusion, closed fracture of right pelvis ramus, right long and ring finger sprains, and right knee osteoarthritis. On examination of her chest, he observed no tenderness of the ribs or sternum and clear lungs. Dr. Hayes reported that examination of appellant's right hip showed no tenderness, swelling, deformity, or crepitus, and normal range of motion. Examination of appellant's right hand revealed no localized tenderness, swelling, or deformity. In response to OWCP's inquiries, Dr. Hayes opined that the accepted conditions of traumatic pneumothorax, right 4<sup>th</sup> and 5<sup>th</sup> closed rib fractures, chest wall contusion, right superior and inferior ramus fracture, right long and ring finger sprains, and aggravation of right lower leg

arthritis had resolved. He explained that there was no evidence to support that the work-related conditions were active and causing objective findings. Dr. Hayes noted that objective findings of the ribs and pelvis showed no deformity, tenderness, or crepitus. He indicated that objective findings of the right and long ring fingers showed only mild swelling in the proximal interphalangeal joints of the hand and normal range of motion. Dr. Hayes also indicated that examination of the right knee revealed full range of motion and excellent stability. He explained that appellant's prognosis was excellent and that there was no need for any further treatment. Dr. Hayes concluded that she was capable of returning to her date-of-injury job as a rural carrier. In a December 10, 2022 work capacity evaluation (Form OWCP-5c), he indicated that appellant was capable of performing her usual job without restrictions.

In a notice dated January 19, 2023, 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 2, 2008 employment injury. It found that the weight of the medical evidence rested with Dr. Hayes, who found that she 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 of benefits.

In a letter dated February 16, 2023, appellant through counsel, argued that OWCP had failed to meet its requisite burden of proof to terminate appellant's wage-loss compensation and medical benefits. Counsel contended that Dr. Hayes did not explain the pathophysiological process through which the accepted conditions would have resolved. He also asserted that Dr. Hayes only considered right osteoarthritis in his examination, not the aggravation of left lower leg arthritis.

By decision dated February 21, 2023, OWCP finalized the notice of proposed termination of appellant's wage-loss compensation and medical benefits, effective February 21, 2023. It found that the weight of the medical evidence rested with Dr. Hayes, the second opinion examiner, who had determined in a December 15, 2022 report that she did not have disability or residuals causally related to the accepted June 2, 2008 employment injury.

On March 14, 2023 appellant through counsel, requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.<sup>3</sup>

By decision dated August 16, 2023, OWCP's hearing representative affirmed the February 21, 2023 decision.

### **LEGAL PRECEDENT**

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of benefits.<sup>4</sup> It may not terminate compensation without establishing

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<sup>3</sup> In a May 2, 2023 letter, appellant, through counsel, requested that OWCP expand the acceptance of her claim to include left knee osteoarthritis.

<sup>4</sup> *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).

either that the disability has ceased or that it is no longer related to the employment.<sup>5</sup> OWCP's 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 the employee no longer has residuals of an employment-related condition, which require further medical treatment.<sup>8</sup>

### ANALYSIS

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective February 21, 2023.

OWCP accepted the claim for traumatic pneumothorax without open wound into thorax and subsequently expanded the acceptance of appellant's claim to include closed fracture of the right 4<sup>th</sup> and 5<sup>th</sup> ribs, chest wall contusion, closed fracture of right ramus, right long and ring finger sprain, and right leg osteoarthritis and paid her appropriate compensation. On June 16, 2011 it referred her, along with a SOAF, the medical record, and a series of questions to Dr. Lehman for a second opinion regarding the status of her work-related injury. In a July 28, 2011 report, Dr. Lehman noted his examination findings and opined that appellant's bilateral knee osteoarthritis was aggravated by the June 2, 2008 motor vehicle accident.

OWCP further developed the expansion issue when on November 30, 2022 it referred appellant, along with the medical record, a SOAF, and a series of questions, and to Dr. Hayes for a second opinion evaluation regarding the status of her accepted conditions and current work restrictions. It specifically requested that he list all current diagnoses and provide a well-rationalized explanation to confirm or negate causal relationship between any additional conditions found and the accepted employment factors. In a December 15, 2022 report, Dr. Hayes, OWCP's second opinion examiner, noted that his review of the SOAF and appellant's accepted conditions of traumatic pneumothorax, closed fracture of the right 4<sup>th</sup> and 5<sup>th</sup> ribs, chest wall contusion, closed fracture of right pelvis ramus, right long and ring finger sprains, and right knee osteoarthritis. He provided examination findings and opined that her accepted conditions had resolved. Dr. Hayes explained that there were no examination findings to support that the work-related conditions were active and causing objective findings. He concluded that appellant had no disabling conditions causally related to the accepted June 2, 2008 employment injury and completed a Form OWCP-5c indicating that she was capable of returning to her date-of-injury job. Dr. Hayes, however, failed to reference Dr. Lehman's July 28, 2011 opinion that her bilateral knee osteoarthritis was aggravated by the June 2, 2008 motor vehicle accident.

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<sup>5</sup> *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).

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

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

<sup>8</sup> *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *A.P.*, Docket No. 08-1822 (issued August 5, 2009).

OWCP terminated appellant's compensation benefits based on the second opinion report of Dr. Hayes. However, as it undertook development of the issue of expansion and did not complete its development of that, issue prior to the termination, the Board finds that OWCP failed to meet its burden of proof to terminate her wage-loss compensation and medical benefits, effective February 21, 2023.<sup>9</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 February 21, 2023.<sup>10</sup>

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 16, 2023 decision of the Office of Workers' Compensation Programs is reversed.

Issued: February 27, 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

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<sup>9</sup> See *A.P.*, Docket No. 22-0183 (issued January 9, 2024), *M.B.*, Docket No. 22-1180 (issued August 17, 2023); *C.S.*, Docket No. 20-0621 (issued December 22, 2020).

<sup>10</sup> The Board notes that the Director of OWCP filed a motion on November 6, 2023 requesting that the Board set aside the August 16, 2023 termination decision and remand the case for further specified development. In light of the Board's disposition of this case, the Director's motion is moot.