

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

A.P., Appellant	)	
	)	
and	)	<b>Docket No. 22-0183</b>
	)	<b>Issued: January 9, 2024</b>
	)	
U.S. POSTAL SERVICE, NATIONAL NETWORK DISTRIBUTION CENTER, Jersey City, NJ, Employer	)	
	)	

Appearances: *Case Submitted on the Record*  
 Russell T. Uliase, 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  
 JANICE B. ASKIN, Judge

**JURISDICTION**

On November 16, 2021 appellant, through counsel, filed a timely appeal from May 26 and October 18, 2021 merit decisions 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.

**ISSUES**

The issues are: (1) whether appellant has met her burden of proof to expand the acceptance of her claim to include additional medical conditions as causally related to her accepted

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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 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.*

December 15, 2013 employment injury; (2) whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective February 18, 2021, as she no longer had disability or residuals causally related to her accepted December 15, 2013 employment injury; and (3) whether appellant has met her burden of proof to establish continuing disability or residuals on or after February 18, 2021 causally related to her accepted December 15, 2013 employment injury.

### **FACTUAL HISTORY**

On December 15, 2013, appellant, then a 45-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on that date she sustained a contusion/bruise with skin intact on her right shoulder when she slipped and fell onto the ground while in the performance of duty. She stopped work on December 16, 2013. On November 7, 2017 OWCP accepted the claim for cervical herniated discs at C3-4, C4-5, and C5-6, and cervical radiculopathy. It paid appellant wage-loss compensation on the supplemental rolls, effective January 30, 2014.

In reports dated July 10 and October 11, 2018, Dr. Ellen Sue Ginsberg, an osteopath Board-certified in anesthesiology, examined appellant and provided assessments of carpal tunnel syndrome (CTS), unspecified upper limb; radiculopathy, lumbar and cervical regions; sprain of ligaments of lumbar spine, subsequent encounter; other internal derangements of right knee; other specific joint derangements of right shoulder; fibromyalgia; and cervicocranial syndrome. She opined that the diagnosed conditions were caused or aggravated by appellant's December 15, 2013 employment injury. Dr. Ginsberg further opined that appellant was totally disabled from work commencing December 15, 2013. She concluded that appellant had permanent effects resulting from her accepted injury.

OWCP referred appellant along with the case record, a statement of accepted facts (SOAF), and a series of questions to Dr. Noubar Didizian, a Board-certified orthopedic surgeon, for an opinion regarding the status of appellant's work-related conditions.

In a January 15, 2019 report, Dr. Didizian noted appellant's right knee, right shoulder, neck, and lower back complaints, and reviewed the SOAF and medical record. He diagnosed the accepted conditions of cervical disc displacement and cervical radiculopathy. Dr. Didizian noted that appellant was status post right shoulder rotator cuff repair. He opined that the accepted condition of cervical radiculopathy had resolved. However, Dr. Didizian opined that, appellant's right shoulder condition was aggravated by the December 13, 2015 employment injury, resulting in a full-thickness rotator cuff tear that necessitated surgery performed on March 27, 2014. He recommended that the acceptance of her claim be expanded to include right shoulder full-thickness rotator cuff tear. In an accompanying work capacity evaluation (Form OWCP-5c) of even date, Dr. Didizian noted that appellant could not perform her usual job, but she could work eight hours per day with restrictions.

By decision dated May 23, 2019, OWCP expanded the acceptance of appellant's claim to include resolved cervical radiculopathy and right rotator cuff tear based on Dr. Didizian's recommendation in his second opinion report. It paid her wage-loss compensation on the periodic rolls commencing May 26, 2019. On May 24, 2019 OWCP authorized appellant's March 27, 2014

arthroscopy of the right shoulder rotator cuff repair, extensive debridement, subacromial decompression, and biceps tenotomy.

On May 30, 2019 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review regarding the May 23, 2019 denial of expansion of the claim.

OWCP continued to receive treatment summaries from Dr. Ginsberg. In a June 27, 2019 report, Dr. Ginsberg noted that she had reviewed Dr. Didizian's January 15, 2019 report and disagreed with his findings regarding appellant's work capacity and restrictions. She noted that appellant continued to complain about constant neck pain with associated radiating pain and weakness and numbness to both upper extremities, wrists, and hands. Dr. Ginsberg further noted her prior diagnoses, findings on examination of the cervical spine, and opinion regarding appellant's total disability from work as set forth in her prior May 15, 2019 report and advised that these findings remained unchanged. Thus, she concluded that a customer care position being offered to appellant was not suitable, and that appellant's condition would worsen if she performed the customer care job. Dr. Ginsberg further concluded that appellant was totally disabled from work and that her cervical radiculopathy had not resolved and would not do so in the future.

On August 1, 2019 OWCP found that a conflict in medical opinion existed between Dr. Didizian, the OWCP second opinion physician, and Dr. Ginsberg, appellant's treating physician, as to whether appellant had continuing disability and/or residuals and whether she sustained additional medical conditions causally related to her December 13, 2015 employment injury. To resolve the conflict, on August 7, 2019, it referred appellant, the medical record, SOAF, and series of questions to, Dr. Roy B. Friedenthal, a Board-certified orthopedic surgeon, for an impartial medical examination and an opinion on whether the accepted cervical radiculopathy had resolved, whether she had any employment-related disability or residuals, and whether her current bilateral CTS was a consequence of her accepted December 15, 2013 employment injury.

Following an August 21, 2019 hearing, OWCP's hearing representative, by decision dated September 23, 2019, vacated the May 23, 2019 denial of expansion because OWCP had referred appellant to Dr. Friedenthal for an impartial examination to resolve the conflict in medical opinion evidence as to whether she had continuing residuals of her employment-related cervical radiculopathy.

In an October 28, 2019 report, Dr. Friedenthal, serving as the impartial medical examiner (IME), reviewed appellant's history of injury, the medical record, and the SOAF. He provided a review of systems and noted shortness of breath due to an August 30, 2019 nonwork-related motor vehicle accident. On physical examination of the neck, upper extremities, and back, Dr. Friedenthal reported restricted range of motion (ROM). He reported normal findings on examination of the lower extremities. Dr. Friedenthal also reported essentially normal findings on neurological examination except for give-way weakness more on the right upper extremity than the left upper extremity and right lower extremity. He provided impressions of status post contusions of the right shoulder, right hip, and right knee; status post arthroscopic surgery of the right shoulder with subacromial decompression and rotator cuff repair and biceps tenotomy; status post cervical strain by history only; status post cervical and lumbar strains related to a recent motor vehicle accident; chronic right shoulder rotator cuff disease; multilevel degenerative disc disease

cervical spine; bilateral CTS; diabetic polyneuropathy; and degenerative joint disease of the right knee with degenerative meniscal tear. Dr. Friedenthal advised that appellant's complaints of pain were not supported by his objective findings. He further advised that clinical presentation following the December 15, 2013 employment injury was consistent with contusion injuries and lacked neck or back complaints or findings suggesting acute internal derangement in the shoulder or knee. Dr. Friedenthal noted that a diagnostic workup did not reveal any traumatic changes attributable to the accepted employment injury. He related that there was clearly a full-thickness rotator cuff tear in the form of degenerative disease in the right shoulder prior to the accepted work injury. Dr. Friedenthal indicated that appellant had recurrent symptoms after receiving two injections and while she had some relief following a third injection prior to the accepted injury, it was clear that she had structural lesions that would not have healed and more likely than not were the source of her recurrent symptomatology independent of any superimposed trauma. He advised that while a contusion of the shoulder may have exacerbated pain in the shoulder, there was no evidence that any new structural damage was sustained and hence there was no aggravation of the underlying condition. Dr. Friedenthal indicated that since steroid injection treatment was the most appropriate treatment to return appellant to preinjury status, but was not considered prior to her March 17, 2014 right shoulder surgery, the surgery was performed to address an underlying preexisting condition rather than a new structural injury. He, thus concluded that there was no causal relationship between appellant's right shoulder condition and contusion injury. Dr. Friedenthal noted that while appellant's neck pain was reported at a follow-up evaluation after her initial treatment, clinical presentation was certainly not consistent with an acute multilevel disc injury. He related that magnetic resonance imaging (MRI) scan findings of multilevel disc bulge/protrusion was entirely consistent with changes related to a degenerative process, which did not imply traumatic etiology. Dr. Friedenthal noted that electromyogram/nerve conduction velocity (EMG/NCV) studies revealed no evidence of active cervical radiculopathy. He advised that appellant had fully recovered from mild, if any, strain injury resulting from the accepted employment injury. Dr. Friedenthal further advised that she had recovered from her right lower extremity contusion injury as diagnostic test results were not consistent with acute internal derangement, but rather revealed three-compartment degenerative disease and narrowing of the medial compartment, which did not imply traumatic etiology. He related that degenerative disease was the likely source of her symptomatology. Dr. Friedenthal advised that a lumbar injury related to the accepted employment injury was not supported by the medical records. In sum, he found that appellant sustained contusion injuries, she had underlying preexisting disease in the right shoulder and cervical spine, and degenerative joint disease in the right knee.

In response to the questions posed by OWCP, Dr. Friedenthal opined that the additional conditions of CTS, lumbar and cervical radiculopathy, sprain of lumbar ligaments, right knee and right shoulder internal derangements, fibromyalgia and cervicocranial syndrome were not causally related to the accepted employment injury. He noted that there was no documentation of acute injury to the wrists or hands and no injury to the left side of her body and that CTS did not imply traumatic etiology as it had other potential contributory factors. Dr. Friedenthal further noted that he could not confirm lumbar radiculopathy in the absence of changes to the lower extremities demonstrated on a June 12, 2017 EMG/NCV study. Additionally, he noted that he did not have diagnostic studies of the lumbar spine to further address that issue. Dr. Friedenthal related that appellant's right knee condition was related to degenerative arthritis and degenerative meniscal tearing. He found no evidence of fibromyalgia, noting that the condition had no definable pathophysiology or objective diagnostic criteria and essentially is a diagnosis of exclusion for

unexplained pain in multiple areas. Dr. Friedenthal noted that appellant had complaints of pain in multiple areas. He further noted that medical records did not confirm any lumbar sprain injury. Dr. Friedenthal reiterated that cervical radiculopathy was not confirmed on EMG/NCV studies. He noted that the development of radiculopathy was common in the context of degenerative joint and disc disease and its presence did not imply traumatic etiology. Dr. Friedenthal maintained that certainly it could not be causally related to the employment, particularly since appellant's symptoms were always right sided. He opined that appellant could not return to her former employment due to advancing age, advancing neuropathy, bilateral CTS, chronic disease in her right shoulder, and degenerative joint disease in her right knee. Dr. Friedenthal, however, opined that she could perform sedentary work with no overhead activities. In an undated Form OWCP-5c, he indicated that appellant could work four hours per day with restrictions that included, among other things, pulling up to two hours per day.

In an April 21, 2020 report, Dr. Ginsberg reiterated her assessments of CTS, unspecified upper limb; lumbar and cervical radiculopathy; sprain of ligaments of lumbar spine, other internal derangements of right knee, other specific joint derangements of right shoulder, fibromyalgia, and cervicocranial syndrome. She also reiterated her opinions that these conditions and appellant's disability from work commencing December 15, 2013 were caused or aggravated by the accepted employment injury. Additionally, Dr. Ginsberg advised that appellant had permanent effects from the accepted work injury.

By letter dated May 21, 2020, OWCP requested that Dr. Friedenthal clarify whether the accepted conditions of herniated cervical disc at C3-C4, C4-C5, and C5-C6 and right rotator cuff tear had resolved. It also requested that he clarify appellant's work restrictions by indicating how many pounds she could pull and providing whether she had a lifting restriction, and if so, how many hours and pounds she could lift.

In a response letter dated June 2, 2020, Dr. Friedenthal advised that appellant's accepted cervical disc herniation and rotator cuff tear had fully resolved as she was at her structural preinjury status. He noted that the presence of chronic changes in the shoulder and neck reflected preexisting conditions that were neither caused by nor permanently altered by the December 15, 2013 employment injury. Dr. Friedenthal indicated that appellant could pull five pounds up to two hours per day.

OWCP, by development letter dated November 17, 2020, requested that appellant submit a rationalized medical opinion from Dr. Ginsberg explaining why and how the additional conditions she provided were causally related to the December 15, 2013 employment injury. It afforded her 30 days to submit the requested evidence. No response was received.

In a separate letter of even date, OWCP noted the additional conditions diagnosed by Dr. Ginsberg and requested that Dr. Friedenthal provide a rationalized opinion as to whether these conditions were causally related to the accepted employment injury.

In a supplemental opinion dated December 1, 2020, Dr. Friedenthal, opined that the additional conditions of CTS, unspecified upper limb; lumbar and cervical radiculopathy; sprain of ligaments of lumbar spine; other internal derangements of right knee; other specific joint derangements of right shoulder; fibromyalgia; and cervicocranial syndrome were not causally

related to the December 15, 2013 employment injury. He reiterated the reasons why these conditions were not causally related to the accepted employment injury as set forth in his prior October 28, 2019 report.

By decision dated December 22, 2020, OWCP denied expansion of the acceptance of appellant's claim to include CTS, unspecified upper limb; radiculopathy, lumbar region; sprain of ligaments of lumbar spine, subsequent encounter; other internal derangements of right knee; other specific joint derangements of right shoulder; fibromyalgia; and cervicocranial syndrome. It found that the opinion of Dr. Friedenthal constituted the special weight of the medical evidence.

On December 29, 2020 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review regarding OWCP's denial of expansion of the claim.

By notice dated January 6, 2021, OWCP advised appellant that it proposed to terminate her wage-loss compensation and medical benefits based on Dr. Friedenthal's impartial medical opinion that the December 15, 2013 accepted conditions had ceased without residuals or disability. It afforded her 30 days to submit additional evidence or argument challenging the proposed termination. Appellant did not respond.

By decision dated February 17, 2021, OWCP terminated appellant's wage-loss compensation and medical benefits, effective February 18, 2021. It found that the opinion of Dr. Friedenthal, as the IME, constituted the special weight of the evidence and established that she no longer had residuals or disability due to her December 15, 2013 employment injury.

On February 22, 2021 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review regarding the termination of benefits.

On April 5, 2021, an oral hearing was held regarding the denial of expansion of the claim.

Appellant subsequently submitted an April 28, 2021 report from Dr. Laura E. Ross, a Board-certified orthopedic surgeon. Dr. Ross noted a history of the December 15, 2013 employment injury, discussed physical examination findings, and reviewed diagnostic test results. She opined that, appellant suffered from residuals and disability from work related to her employment-related injury and required medical treatment. Dr. Ross reviewed Dr. Friedenthal's reports and disagreed with his finding that appellant had fully recovered from her employment injury. She maintained that appellant had continued pain in the previously injured areas.

By decision dated May 26, 2021, OWCP's hearing representative affirmed the December 22, 2020 denial of expansion.

On June 10, 2021 an oral hearing was held regarding the termination of appellant's wage-loss compensation and medical benefits.

By decision dated October 18, 2021, OWCP's hearing representative affirmed the February 17, 2021 termination decision, finding that OWCP had not met its burden of proof to justify the termination, and that appellant had not met her burden of proof to establish continuing

residuals and/or disability on or after February 18, 2021 causally related to the accepted employment injury.

### **LEGAL PRECEDENT -- ISSUE 1**

When an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.<sup>3</sup>

To establish causal relationship, the employee must submit rationalized medical opinion evidence.<sup>4</sup> The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the accepted employment injury.<sup>5</sup> The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.<sup>6</sup>

Section 8123(a) of FECA provides, in pertinent part: "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 third physician (known as a referee physician or IME) who shall make an examination."<sup>7</sup> 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.<sup>8</sup> When there exists opposing medical reports of virtually equal weight and rationale and the 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.<sup>9</sup>

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<sup>3</sup> *D.T.*, Docket No. 20-0234 (issued January 8, 2021); *see T.E.*, Docket No. 18-1595 (issued March 13, 2019); *T.F.*, Docket No. 17-0645 (issued August 15, 2018); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

<sup>4</sup> *D.T.*, *id.*; *T.K.*, Docket No. 18-1239 (issued May 29, 2019); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

<sup>5</sup> *D.S.*, Docket No. 18-0353 (issued February 18, 2020); *T.K.*, *id.*; *I.J.* 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>6</sup> *Id.*

<sup>7</sup> 5 U.S.C. § 8123(a).

<sup>8</sup> 20 C.F.R. § 10.321; *P.B.*, Docket No. 20-0984 (issued November 25, 2020); *R.C.*, 58 ECAB 238 (2006).

<sup>9</sup> *See W.N.*, Docket No. 21-0123 (issued December 29, 2021); *A.G.*, Docket No. 21-0315 (issued December 29, 2021); *R.R.*, Docket No. 19-0086 (issued February 10, 2021); *Darlene R. Kennedy*, 57 ECAB 414 (2006).

## ANALYSIS -- ISSUE 1

The Board finds that the case is not in posture for decision regarding whether appellant has met her burden of proof to expand the acceptance of her claim to include additional medical conditions as causally related to her accepted December 15, 2013 employment injury.

OWCP found a conflict in the medical opinion evidence between Dr. Ginsberg, appellant's treating physician, and Dr. Didizian, OWCP's second opinion physician, on the issue of whether appellant's additional diagnosed conditions were causally related to the accepted December 15, 2013 employment injury. It properly referred appellant to Dr. Friedenthal for an impartial medical examination to resolve the conflict in medical evidence, pursuant to 5 U.S.C. § 8123(a).

Dr. Friedenthal, in his October 28, 2019 report and December 1, 2020 supplemental report, opined that appellant's diagnosed conditions, including right rotator cuff tear and cervical radiculopathy were not causally related to the accepted December 15, 2013 employment injury. He reasoned that there were no objective findings on examination to support that these diagnoses were caused by the accepted employment injury. Dr. Friedenthal attributed the full-thickness rotator cuff tear to degenerative disease in the right shoulder that preexisted the accepted work injury. Additionally, he attributed appellant's cervical radiculopathy to degenerative joint and disc disease, noting that its presence did not imply traumatic etiology such as the accepted employment injury. However, the SOAF provided to him indicated that OWCP had already accepted that appellant sustained right rotator cuff tear and cervical radiculopathy, causally related to her accepted December 15, 2013 employment injury.

It is well established that a physician's opinion must be based on a complete and accurate factual and medical background. When OWCP has accepted an employment condition as occurring in the performance of duty, the physician must base his opinion on these accepted conditions.<sup>10</sup>

OWCP's procedures and Board precedent dictate that when an OWCP medical adviser, second opinion specialist, or IME 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.<sup>11</sup> Dr. Friedenthal, did not rely on the SOAF as a framework in reaching his conclusions. The Board, thus, finds that his reports are of diminished probative value and insufficient to resolve the conflict in medical opinion.<sup>12</sup>

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<sup>10</sup> See *A.P.*, Docket No. 22-1092 (issued November 8, 2022); *G.B.*, Docket No. 20-0750 (issued October 27, 2020); *T.P.*, 58 ECAB 524 (2007).

<sup>11</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3 (October 1990); see also *A.P., id.*; *D.C.*, Docket No. 21-0780 (issued December 22, 2021); *Paul King*, 54 ECAB 356 (2003).

<sup>12</sup> See *A.P., id.*; *M.H.*, Docket No. 21-1014 (issued July 8, 2022); *F.H.*, Docket No. 21-0579 (issued December 9, 2021); *P.C.*, Docket No. 19-1468 (issued September 9, 2020).



The case must, therefore, be remanded to OWCP for further development. On remand, OWCP shall refer appellant, together with a SOAF and the medical record, to a new IME for an opinion on whether appellant's additional diagnosed conditions are causally related to the accepted December 15, 2013 employment injury. Following this and other such development deemed necessary, OWCP shall issue a *de novo* decision.

### LEGAL PRECEDENT -- ISSUE 2

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>13</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>14</sup> Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>15</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.<sup>16</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>17</sup>

Where OWCP has referred the case to an IME to resolve a conflict in the medical evidence, the opinion of such specialist, if sufficiently well reasoned and based upon a proper factual background, must be given special weight.<sup>18</sup>

### ANALYSIS -- ISSUE 2

The Board finds that OWCP improperly terminated appellant's wage-loss compensation and medical benefits, effective February 18, 2021.

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<sup>13</sup> See *D.B.*, Docket No. 19-0663 (issued August 27, 2020); *D.G.*, Docket No. 19-1259 (issued January 29, 2020); *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

<sup>14</sup> See *D.B.*, *id.*; *D.G.*, *id.*; *R.P.*, *id.*; *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

<sup>15</sup> *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).

<sup>16</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>17</sup> *K.W.*, *supra* note 15; see *A.G.*, *id.*; *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002); *Furman G. Peake*, *id.*

<sup>18</sup> See *O.O., Jr.*, Docket No. 21-1149 (issued March 15, 2022); *K.C.*, Docket No. 20-1628 (issued September 1, 2021); *Y.I.*, Docket No. 20-0263 (issued November 30, 2020); *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

As explained above, OWCP undertook development of the medical record to determine whether the acceptance of appellant's claim should be expanded to include additional conditions, but has not resolved the issue. As the issue of expansion is not in posture for decision, the Board finds that OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits.<sup>19</sup>

**CONCLUSION**

The Board finds that the case is not in posture for decision regarding whether appellant has met her burden of proof to expand the acceptance of her claim to include additional medical conditions as causally related to her accepted December 15, 2013 employment injury. The Board further finds that OWCP improperly terminated appellant's wage-loss compensation and medical benefits, effective February 18, 2021.<sup>20</sup>

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 26, 2021 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board. The October 18, 2021 decision of the Office of Workers' Compensation Programs is reversed.

Issued: January 9, 2024  
Washington, DC

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

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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<sup>19</sup> See *M.B.*, Docket No. 22-1180 (issued August 17, 2023); *C.S.*, Docket No. 20-0621 (issued December 22, 2020).

<sup>20</sup> In light of the Board's disposition of Issue 2, Issue 3 is rendered moot.