

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

R.L., Appellant	)	
	)	
and	)	<b>Docket No. 22-1263</b>
	)	<b>Issued: January 5, 2024</b>
DEPARTMENT OF THE NAVY,	)	
COMMANDER U.S. PACIFIC FLEET,	)	
Pearl Harbor, HI, Employer	)	
	)	

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On August 29, 2022 appellant filed a timely appeal from a March 14, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* 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.*

## **ISSUE**

The issue is whether appellant has met his burden of proof to establish continuing disability or residuals on or after August 13, 2013, causally related to his accepted May 6, 1983 employment injury.

## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>3</sup> The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On July 13, 1983 appellant, then a 25-year-old machinist, filed a traumatic injury claim (Form CA-1) alleging that he sustained injury on May 6, 1983 when his supervisor punched him in his right eye and knocked him to the floor, rendering him unconscious, while in the performance of duty. He stopped work on May 6, 1983. OWCP accepted appellant's claim for concussion, cervical strain, right eyebrow laceration, postconcussion syndrome, depression, and consequential migraine headaches.

OWCP subsequently referred appellant, along with a statement of accepted facts and the medical record, for second opinion examinations with Dr. Lewis B. Almarez, a Board-certified neurologist; Dr. Alfred I. Blue, a Board-certified orthopedic surgeon; and Dr. Douglas Robinson, a Board-certified psychiatrist.

In a December 19, 2012 report, Dr. Almarez concluded that appellant's concussion and migraine headaches had long since resolved. In a separate December 19, 2012 report, Dr. Blue determined that appellant had no objective musculoskeletal findings, and opined that his cervical strain had long since dissipated and resolved. In another December 19, 2012 report, Dr. Robinson diagnosed depressive disorder, but opined that this condition was related to appellant's personality disorder rather than the accepted May 6, 1983 employment injury. He advised that appellant was not suffering from post-traumatic stress disorder (PTSD).

By decision dated August 13, 2013, OWCP terminated appellant's wage-loss compensation and medical benefits, effective August 13, 2013, finding that the opinions of OWCP's referral physicians represented the weight of the medical opinion evidence.

Appellant subsequently submitted additional medical evidence, including reports of Dr. Boyd K. Southwick, an osteopath and Board-certified family medicine specialist, and Dr. Richard W. Worst, a Board-certified psychiatrist.

Appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on March 17, 2014.

By decision dated June 3, 2014, OWCP's hearing representative affirmed OWCP's August 13, 2013 termination decision.

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<sup>3</sup> Docket No. 15-1356 (issued November 17, 2015).

On December 1, 2014 appellant requested reconsideration of the June 3, 2014 decision.

By decision dated February 25, 2015, OWCP denied modification of the June 3, 2014 decision.

Appellant appealed to the Board. By decision dated November 17, 2015,<sup>4</sup> the Board affirmed OWCP's February 25, 2015 decision, finding that OWCP met its burden of proof to terminate his wage-loss compensation and medical benefits, effective August 13, 2013. The Board further found that appellant failed to meet his burden of proof to establish continuing employment-related disability or residuals on or after August 13, 2013.

On August 16, 2016 appellant requested reconsideration.

In support thereof, appellant submitted an April 29, 2015 report, wherein Dr. Southwick indicated that he had treated appellant for seven years; described the May 6, 1983 assault at work, which rendered him unconscious; and discussed the medical treatment provided since the assault. He opined that appellant's current medical condition was a "complex neuropsychiatric issue caused by the brain injury that he received on May 6, 1983." Dr. Southwick argued that prior specialists only used fragments of his previous physicians' notes, but not the actual diagnoses. He advised that appellant had been on medication for 32 years to treat his PTSD and chronic pain syndrome caused by the May 6, 1983 assault. Dr. Southwick opined that appellant had reached maximum medical improvement (MMI) with respect to his musculoskeletal complaints, and that he now had a strong and complex neuropsychiatric condition related to the assault that he never had been able to get over. He noted, "[g]iven the fact that [appellant] has [not] worked in over 32 years, and the fact that he has this recurrent and relapsing neurocognitive disorder stemming from the assault in 1983, I feel that [appellant's] disability is permanent, and that he will not ever be able to be gainfully employed."

In a January 8, 2016 report, Dr. Erich W. Garland, a Board-certified neurologist, reported physical examination findings, noting reduced range of motion of the cervical spine and normal strength in appellant's upper and lower extremities. He indicated that appellant had a history of a traumatic brain injury, which resulted in concussion, blunt head trauma, and cervical whiplash injury. Dr. Garland noted, "[appellant] has residual symptoms from this injury during the course of employment." He advised that appellant's continuing headaches were primarily due to referred pain from his neck, and advised that appellant has reported that his "symptoms have been present since [appellant's] injury during the course of employment and are therefore directly related."

In an April 5, 2016 report, Dr. Worst indicated that appellant suffered a head injury at work on May 6, 1983 and was currently taking anti-depressant medication. He noted, "[i]n my opinion, this is still the result of the original physical and psychic trauma caused by the assault and the man's difficulty in adjusting to his losses over the subsequent years." Dr. Worst opined that appellant had not recovered from his work-related concussion, and was left with headaches and emotional distress, which manifested themselves as depression, anxiety disorder, and adjustment disorder, which were related to the May 6, 1983 employment injury.

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<sup>4</sup> Docket No. 15-1356 (issued November 17, 2015).

In an April 11, 2016 report, Dr. Southwick asserted that Dr. Blue improperly stated in his second opinion report that appellant did not have a laceration over his right eyebrow. He opined that appellant's neck, shoulder, and upper back pain continued to be related to his May 6, 1983 employment injury.

By decision dated March 22, 2018, OWCP denied modification, finding that the medical evidence of record was insufficient to establish continuing disability or residuals on or after August 13, 2013 causally related to the accepted employment injury.

On March 6, 2019 appellant requested reconsideration of the March 22, 2018 decision.

Appellant submitted a January 14, 2019 report, wherein Dr. Southwick opined that appellant still suffered from conditions related to his May 6, 1983 employment injury, including postconcussion traumatic brain injury, and head, neck, back, and shoulder pain with related depression and anxiety. Dr. Southwick opined that appellant needed specialist medical care for these conditions and requested that he be provided with disability payments.

In a February 6, 2019 report, Dr. Worst discussed his September 19, 2014 examination and evaluation of appellant's psychiatric condition, which he believed "did substantiate a very extensive examination including a structured mental status." He opined that it was still clear to him that appellant continued to be psychologically harmed by the May 6, 1983 assault.

By decision dated May 20, 2019, OWCP denied modification of the March 22, 2018 decision.

On May 14, 2020 appellant requested reconsideration.

Appellant submitted an April 4, 2020 report from Dr. Southwick, who opined that the denial of medical treatment had compounded his work-related conditions, including neck pain, headaches, and back pain, as well as anxiety and PTSD. Dr. Southwick indicated that appellant had been medicated for 37 years for his chronic work-related condition and requested that his disability claim be approved.

By decision dated May 22, 2020, OWCP denied modification of its May 20, 2019 decision.

On May 21, 2021 appellant requested reconsideration.

In support thereof, appellant submitted an April 19, 2021 report, wherein Dr. Southwick discussed the findings of an August 8, 2014 magnetic resonance imaging (MRI) scan of appellant's cervical spine, and opined that he continued to suffer from head and neck injuries caused by the May 6, 1983 assault.

By decision dated August 23, 2021, OWCP denied modification of its May 22, 2020 decision.

On March 8, 2022 appellant requested reconsideration.

Appellant submitted a September 27, 2021 report from Dr. Southwick, who advised that appellant had been permanently disabled since the May 6, 1983 employment injury.

Dr. Southwick advised that appellant had multiple conditions, including severe headaches, cervical strain, degenerative disease of the cervical spine, and depression with anxiety.

By decision dated March 14, 2022, OWCP denied modification of its August 23, 2021 decision.

### **LEGAL PRECEDENT**

Once OWCP has accepted a claim it has the burden of justifying termination or modification of compensation benefits.<sup>5</sup> When OWCP properly terminates compensation benefits, the burden shifts to appellant to establish continuing residuals or disability after that date, causally related to the accepted employment injury.<sup>6</sup> To establish causal relationship between the condition as well as any attendant disability or entitlement to medical benefits claimed and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background, supporting such causal relationship.<sup>7</sup>

### **ANALYSIS**

The Board finds that appellant has not met his burden of proof to establish continuing disability or residuals on or after August 13, 2013, causally related to his accepted May 6, 1983 employment injury.

Preliminarily, the Board notes that it previously affirmed OWCP's February 25, 2015 decision, finding that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective August 13, 2013, and that the evidence of record at the time of OWCP's February 25, 2015 decision was insufficient to establish continuing employment-related disability or residuals on or after August 13, 2013. Findings made in prior Board decisions are *res judicata* and cannot be considered absent further merit review by OWCP under section 8128 of FECA.<sup>8</sup>

Appellant subsequently submitted April 29, 2015, April 11, 2016, January 14, 2019, April 4, 2020, and April 19 and September 27, 2021 reports, wherein Dr. Southwick opined that appellant continued to have residuals and disability due to the accepted May 6, 1983 employment injury on or after August 13, 2013. In his April 29, 2015 report, Dr. Southwick opined that appellant's current medical condition was a "complex neuropsychiatric issue caused by the brain injury that he received on May 6, 1983." He noted, "[g]iven the fact that [appellant] has [not] worked in over 32 years, and the fact that he has this recurrent and relapsing neurocognitive disorder stemming from the assault in 1983, I feel that [appellant's] disability is permanent and

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<sup>5</sup> *L.L.*, Docket No. 18-1426 (issued April 5, 2019); *C.C.*, Docket No. 17-1158 (issued November 20, 2018); *I.J.*, 59 ECAB 408 (2008); *Vivien L. Minor*, 37 ECAB 541 (1986).

<sup>6</sup> *See S.M.*, Docket No. 18-0673 (issued January 25, 2019); *C.S.*, Docket No. 18-0952 (issued October 23, 2018); *Manuel Gill*, 52 ECAB 282 (2001).

<sup>7</sup> *Id.*

<sup>8</sup> *C.M.*, Docket No. 19-1211 (issued August 5, 2020); *C.D.*, Docket No. 19-1973 (issued May 21, 2020); *M.D.*, Docket No. 20-0007 (issued May 13, 2020); *Clinton E. Anthony, Jr.*, 49 ECAB 476 (1998).

that he will not ever be able to be gainfully employed.” In his April 11, 2016 report, Dr. Southwick opined that appellant’s neck, shoulder, and upper back pain continued to be related to his May 6, 1983 employment injury. In a January 14, 2019 report, he opined that appellant still suffered from conditions related to his May 6, 1983 employment injury, including postconcussion traumatic brain injury, and head, neck, back, and shoulder pain with related depression and anxiety. Dr. Southwick advised that appellant needed specialist medical care for these conditions, and requested that he be provided with disability payments. On April 4, 2020 he opined that the denial of medical treatment had compounded appellant’s work-related conditions, including neck pain, headaches, and back pain, as well as anxiety and PTSD. Dr. Southwick asserted that appellant had been medicated for 37 years for his chronic work-related condition, and requested that his disability claim be approved. In an April 19, 2021 report, he reiterated that appellant continued to suffer from head and neck injuries caused by the May 6, 1983 assault. On September 27, 2021 Dr. Southwick advised that appellant had severe headaches, cervical strain, degenerative disease of the cervical spine, and depression with anxiety, and had been permanently disabled since the May 6, 1983 employment injury. However, none of these reports included sufficient medical rationale explaining how or why the accepted conditions continued to cause or contribute to work-related disability or residuals on or after August 13, 2013. The Board has held that reports that do not contain medical rationale explaining how or why the accepted employment injury caused or contributed to the claimed disability or residuals are of limited probative value.<sup>9</sup> Therefore, this evidence is insufficient to establish appellant’s claim.

Appellant also submitted a January 8, 2016 report, wherein Dr. Garland indicated that appellant had a history of a traumatic brain injury, which resulted in concussion, blunt head trauma, and cervical whiplash injury, and noted, “[appellant] has residual symptoms from this injury during the course of employment.” He advised that appellant’s continuing headaches were primarily due to referred pain from his neck, and advised that appellant has reported that “[his] symptoms have been present since his injury during the course of employment and are therefore directly related.” However, Dr. Garland similarly failed to provide sufficient medical rationale in support of his opinion on causal relationship.<sup>10</sup> Therefore, this evidence is also insufficient to establish appellant’s claim.

In an April 5, 2016 report, Dr. Worst indicated that appellant suffered a head injury at work on May 6, 1983 and was currently taking anti-depressant medication. He noted, “[i]n my opinion, this is still the result of the original physical and psychic trauma caused by the assault and the man’s difficulty in adjusting to his losses over the subsequent years.” Dr. Worst opined that appellant had not recovered from his work-related concussion, and was left with headaches and emotional distress, which manifested themselves as depression, anxiety disorder, and adjustment disorder, which were related to the May 6, 1983 employment injury. In a February 6, 2019 report, he reiterated that it was still clear to him that appellant continued to be psychologically harmed by the May 6, 1983 assault. However, as Dr. Worst did not provide sufficient medical rationale in support of his conclusion that appellant had continuing work-related disability or residuals on or

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<sup>9</sup> See *T.T.*, Docket No. 18-1054 (issued April 8, 2020); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017). See also *L.G.*, Docket No. 19-0142 (issued August 8, 2019) (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

<sup>10</sup> *Id.*

after August 13, 2013, his opinion is of limited probative value.<sup>11</sup> Therefore, this evidence is insufficient to establish appellant's claim.

As the medical evidence of record is insufficient to establish continuing disability or residuals on or after August 13, 2013, causally related to the accepted May 6, 1983 employment injury, the Board finds that appellant has not met his burden of proof.

**CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish continuing disability or residuals on or after August 13, 2013, causally related to his accepted May 6, 1983 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 14, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 5, 2024  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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<sup>11</sup> *Id.*