

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

K.S., Appellant)	
)	
and)	Docket No. 22-1281
)	Issued: January 11, 2024
U.S. POSTAL SERVICE, MID-ISLAND NEW)	
YORK PROCESSING & DISTRIBUTION)	
CENTER, Melville, NY, Employer)	
)	

Appearances:
Thomas Harkins, 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
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On September 1, 2022 appellant, through counsel, filed a timely appeal from a March 15, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP).² Pursuant to the

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 The Board notes that following the March 15, 2022 decision, OWCP received additional evidence. 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.*

Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

ISSUES

The issues are: (1) whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective January 27, 2021, as she no longer had disability or residuals causally related to her accepted June 29, 2016 employment injury; and (2) whether appellant has met her burden of proof to establish continuing disability or residuals on or after January 27, 2021 causally related to the accepted employment injury.

FACTUAL HISTORY

On June 29, 2016 appellant, then a 27-year-old casual employee, filed a traumatic injury claim (Form CA-1) alleging that on that date coworkers pushed a bulk mail carrier over her left ankle while she was in the performance of duty. She stopped work on June 29, 2016. OWCP accepted the claim for left ankle sprain, left foot calcaneus fracture, left calcaneal spur, and a crush injury of the left foot. It paid compensation on the supplemental rolls beginning on August 14, 2016 and on the periodic rolls beginning October 16, 2016.

On May 24, 2018 Dr. John Feder, a Board-certified orthopedic surgeon, performed an OWCP-authorized ostectomy, calcaneus excision, nonunion, and splint application. He examined appellant on October 26, 2018 and determined that she could return to light-duty work. Dr. Feder completed an attending physician's report (Form CA-20) on June 27, 2019 finding that appellant was totally disabled. He repeated this finding on September 6, 2019. In a June 8, 2020 note, Dr. Feder recounted that appellant's left ankle pain had increased. On physical examination he found minimal swelling of the left foot and ankle with a healed incision. Dr. Feder found that sensation testing of the left foot and ankle was normal and that appellant walked without assistive device. He determined that she had reached maximum medical improvement.

OWCP referred appellant, along with a statement of accepted facts (SOAF) and a series of questions, for a second opinion examination with Dr. Leon Sultan, a Board-certified orthopedic surgeon. It requested that he provide an opinion regarding whether appellant had disability or residuals related to her accepted June 29, 2016 employment injury.

In a September 24, 2020 report, Dr. Sultan discussed appellant's factual and medical history and reported her physical examination findings. He found that objective examination revealed a well-healed surgical scar, but an otherwise normal left foot and ankle. Dr. Sultan advised that appellant's subjective complaints were "not reflected in today's examination." Based on this examination and review of the medical evidence, he determined that her left foot and ankle conditions had resolved through surgery and that she did not require further medical treatment. Dr. Sultan concluded that appellant was capable of returning to her date-of-injury job without medical restrictions.

³ 5 U.S.C. § 8101 *et seq.*

On October 28, 2020 OWCP issued a notice of proposed termination of appellant's wage-loss compensation and medical benefits because she ceased to have disability or residuals causally related to her accepted June 29, 2016 employment injury. It indicated that the weight of the medical opinion evidence rested with the well-rationalized opinion of Dr. Sultan, the second opinion examiner. OWCP afforded appellant 30 days to submit evidence and argument challenging the proposed termination action.

OWCP received a December 1, 2020 report from Maurice D. Castillo, a physician assistant.

By decision dated January 26, 2021, OWCP finalized the termination of appellant's wage-loss compensation and medical benefits, effective January 27, 2021, because she had ceased to have disability or residuals causally related to her accepted June 29, 2016 employment injury. It found that Dr. Sultan's opinion constituted the weight of the medical opinion evidence.

OWCP continued to receive evidence, including a February 12, 2021 report from Dr. Feder. Dr. Feder recounted appellant's June 29, 2016 employment injury and medical treatment. On examination he found tenderness of the left sinus tarsi, and minimal left lateral ankle and foot swelling without ecchymosis. Dr. Feder further found normal sensation of the left ankle, foot, and lower leg. He diagnosed a crush injury of the left foot, a closed left foot fracture with nonunion, and a nonunion anterior process calcaneus fracture. Dr. Feder opined that appellant could return to work with restrictions.

On February 16, 2021 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

OWCP received an April 9, 2021 note from Debra Beagan, a physician assistant.

By decision dated June 15, 2021, OWCP's hearing representative affirmed the January 26, 2021 decision, finding that Dr. Sultan's September 24, 2020 report was entitled to the weight of the medical evidence and sufficient to meet OWCP's burden of proof to terminate appellant's wage-loss compensation and medical benefits.

On December 19, 2021 appellant, through counsel, requested reconsideration. She provided a November 28, 2021 report from Dr. Feder reviewing her history of medical treatment and repeating his previous findings on physical examination. Dr. Feder diagnosed a left crush injury of the foot and an anterior process nonunion calcaneus fracture. He asserted that appellant's prognosis was guarded and that she could not return to her date-of-injury position. Dr. Feder attributed the left foot and ankle injury to her June 29, 2016 employment injury and recommended vocational training for a sedentary position.

By decision dated March 15, 2022, OWCP denied modification of its January 26, 2021 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 an employee's benefits.⁴ 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.⁵ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

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 January 27, 2021, as she no longer had disability or residuals causally related to her accepted June 29, 2016 employment injury.

OWCP referred appellant to Dr. Sultan for a second opinion evaluation to determine the status of appellant's accepted conditions and work capacity. In his September 24, 2020 report, Dr. Sultan reviewed the SOAF and presented examination findings. He reported that there were no objective findings on physical examination. Based on the SOAF, Dr. Sultan opined that appellant was capable of returning to her date-of-injury position.

The Board finds that OWCP properly accorded the weight of the medical evidence to Dr. Sultan in terminating appellant's wage-loss compensation and medical benefits, effective January 27, 2021. Dr. Sultan based his opinion on a proper factual and medical history and physical examination findings and provided medical rationale for his opinion. His opinion that appellant could return to her date-of-injury position was based on an accurate description of appellant's date-of-injury job duties, the medical evidence of record, and his examination findings regarding her disability and medical status causally related to the June 29, 2016 accepted left ankle conditions. Accordingly, OWCP properly relied upon Dr. Sultan's report in terminating her wage-loss compensation and medical benefits for the accepted June 29, 2016 employment injury.⁷

Dr. Feder related in his June 27 and September 6, 2019 and June 8, 2020 reports that appellant remained symptomatic and unable to return to work. However, he failed to offer an opinion addressing why she continued to have disability from work due to her objective residuals of her accepted conditions, rather than from her symptoms. The Board finds that Dr. Feder's

⁴ *S.C.*, Docket No. 21-0724 (issued September 14, 2022); *D.G.*, Docket No. 19-1259 (issued January 29, 2020); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁵ *See J.P.*, Docket No. 23-0075 (issued May 26, 2023); *S.C., id.*; *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

⁶ *R.L.*, Docket No. 22-1175 (issued May 11, 2023); *S.C., id.*; *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁷ *See R.L., id.*; *D.L.*, Docket No. 22-0161 (issued March 10, 2023); *J.T.*, Docket No. 20-1470 (issued October 8, 2021).

conclusory opinion was insufficient to establish that appellant still had disability or medical residuals causally related to her accepted employment injury.⁸

Appellant also provided additional evidence from Mr. Castillo, a physician assistant, dated December 1, 2020. However, certain healthcare providers such as physician assistants, nurses, nurse practitioners, physical/occupational therapists, and social workers are not considered “physician[s]” as defined under FECA.⁹ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits. Accordingly, OWCP met its burden of proof.¹⁰

LEGAL PRECEDENT -- ISSUE 2

When OWCP properly terminates compensation benefits, the burden shifts to appellant to establish continuing disability or medical residuals after that date, causally related to the accepted employment injury.¹¹ To establish causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background, supporting such causal relationship.¹²

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met her burden of proof to establish continuing disability or residuals on or after January 27, 2021 causally related to the accepted employment injury.

In a February 12, 2021 report, Dr. Feder discussed the history of appellant’s June 29, 2016 employment injury and diagnosed a crush injury of the left foot, a closed left foot fracture with nonunion, and a nonunion anterior process calcaneus fracture. On examination he found tenderness of the left sinus tarsi, and minimal left lateral ankle and foot swelling without ecchymosis. Dr. Feder advised that appellant could work with restrictions. He did not, however, explain with rationale how any continuing disability was causally related to the June 29, 2016

⁸ See *M.D.*, Docket No. 21-0080 (issued August 16, 2022); *E.S.*, Docket No. 20-0673 (issued January 11, 2021).

⁹ Section 8101(2) of FECA provides that physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t); see Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *L.G.*, Docket No. 21-0770 (issued October 13, 2022) (physician assistants are not considered physicians under FECA); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA) *C.P.*, Docket No. 19-1716 (issued March 11, 2020) (a physician assistant is not considered a physician as defined under FECA).

¹⁰ See *M.D.*, *supra* note 8; *K.W.*, Docket No. 19-1224 (issued November 15, 2019).

¹¹ See *M.D.*, *supra* note 8; *C.P.*, Docket No. 21-0173 (issued March 23, 2022); *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).

¹² *Id.*

employment injury. The Board has held that a medical report is of limited probative value if it contains a medical opinion which is unsupported by medical rationale.¹³

On November 28, 2021 Dr. Feder reviewed appellant's history of medical treatment and repeated his previous findings on physical examination. He asserted that her prognosis was guarded and that she could not return to her date-of-injury position. As previously noted, to establish causal relationship between any attendant disability claimed and the employment injury, appellant must submit rationalized medical evidence based on a complete medical and factual background that supports such causal relationship.¹⁴ The Board finds that Dr. Feder's conclusory opinion was insufficient to establish that appellant still had disability or medical residuals causally related to her accepted employment injury.

Appellant also submitted a report from Ms. Beagan, physician assistant, dated April 9, 2021. However, as noted above, certain healthcare providers such as physician assistants, nurses, nurse practitioners, physical/occupational therapists, and social workers are not considered "physician[s]" as defined under FECA.¹⁵ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.

As appellant has not submitted rationalized medical evidence establishing that she had continuing employment-related disability or residuals on or after January 27, 2021 causally related to the accepted June 29, 2016 employment injury, she 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 January 27, 2021, as she no longer had disability or residuals causally related to her accepted June 29, 2016 employment injury. The Board further finds that she has not met her burden of proof to establish continuing disability or residuals on or after January 27, 2021 causally related to the accepted employment injury.

¹³ See *A.T.*, Docket No. 22-0716 (issued February 24, 2023); *G.W.*, Docket No. 22-0301 (issued July 25, 2022); *M.D.*, Docket No. 19-0510 (issued August 6, 2019).

¹⁴ *Supra* note 12.

¹⁵ *Supra* note 9.

ORDER

IT IS HEREBY ORDERED THAT the March 15, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 11, 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