

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

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<b>T.L., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 23-0798</b>
	)	<b>Issued: January 12, 2024</b>
<b>U.S. POSTAL SERVICE, NEW JERSEY</b>	)	
<b>INTERNATIONAL BULK MAIL &amp; NETWORK</b>	)	
<b>DISTRIBUTION CENTER,</b>	)	
<b>Jersey City, NJ, Employer</b>	)	
_____	)	

*Appearances:*  
*James D. Muirhead, Esq., for the appellant<sup>1</sup>*  
*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 May 15, 2023 appellant, through counsel, filed a timely appeal from a February 1, 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 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.*

## **ISSUES**

The issues are: (1) whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective July 22, 2021, as she no longer had disability or residuals causally related to her accepted September 9, 2016 employment injury; and (2) whether appellant has met her burden of proof to establish continuing disability or residuals on or after July 22, 2021, causally related to her accepted September 9, 2016 employment injury.

## **FACTUAL HISTORY**

On September 13, 2016 appellant, then a 45-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on September 9, 2016 she sustained injuries to her back, arms, legs, and hands when she was hit by a container full of mail causing her to fall backwards while in the performance of duty. OWCP accepted the claim for lumbar sprain. Following her injury, appellant sought treatment with Dr. Thomas Helbig, a Board-certified orthopedic surgeon. She stopped work on September 9, 2016, at which time OWCP paid her wage-loss compensation, and she subsequently returned to light-duty work. Appellant stopped work on July 27, 2019 and on December 10, 2019 OWCP accepted her claim for a recurrence of disability, effective July 27, 2019.

On April 21, 2020 Dr. David Conyack, a Board-certified anesthesiologist, treated appellant for pain management. He diagnosed facet arthropathy, lumbar herniated disc, spasm of back muscles, chronic pain, and facet joint pain.

In duty status reports (Form CA-17) dated June 17 and July 15, 2020, Dr. Helbig, an orthopedic surgeon, determined that appellant was unable to work due to back pain. He further noted a diagnosis of lumbar disc herniation and lumbar myospasms.

On August 4, 2020 OWCP referred appellant, along with the case record, a statement of accepted facts (SOAF) and a series of questions to Dr. Paul G. Teja, a Board-certified orthopedic surgeon, for a second opinion evaluation and determination regarding whether she had any disability or residuals causally related to the accepted September 9, 2016 employment injury.

On August 25, 2020 Dr. Teja evaluated appellant for the purpose of the second opinion evaluation. In his report, he documented her physical examination findings and discussed her history of injury. Dr. Teja explained that appellant sustained a work-related injury on September 9, 2016 when a driver of a vehicle was speeding and hit several containers, which in turn hit her, causing her to fall directly onto her buttocks and back. Appellant sought emergency medical treatment that same date. Dr. Teja opined that her work-related lumbar strain had resolved, noting that his clinical examination revealed no objective findings that would support her continued subjective complaints. He concluded that appellant could return to her date-of-injury job, full duty, without restrictions as her work-related condition had resolved.

OWCP subsequently received progress notes dated September 16, 2020, wherein Dr. Helbig continued to restrict appellant from returning to work and documenting treatment for multilevel lumbar disc herniations and low back pain.

On October 7, 2020 OWCP determined that, a conflict of medical opinion existed between appellant's treating physician Dr. Helbig, and Dr. Teja, OWCP's second opinion physician, as to whether her work-related conditions had resolved.

On April 21, 2021 OWCP referred appellant, along with a SOAF, the medical record and a series of question to Dr. Sheldon Manspeizer, a Board-certified orthopedic surgeon, for an impartial medical evaluation.

In a May 26, 2021 report, Dr. Manspeizer documented appellant's physical examination findings and discussed her history of injury. He noted complaints of continued pain in the lower back, pain into her left leg, and numbness in the toes. Upon clinical examination, Dr. Manspeizer reported findings of degenerative disc disease, associated arthritis of the lumbosacral spine, and a resolved lumbosacral sprain. He found no objective physical findings to indicate cord compression, nerve root impingement, herniated discs, or neurological deficit. Dr. Manspeizer explained that appellant's examination revealed that she continued to suffer from degenerative spinal conditions and preexisting arthritic conditions not caused by the September 9, 2016 employment injury. He determined that there were no residuals of her work-related medical condition as the employment-related lumbosacral sprain had resolved and, thus, she was no longer disabled as a result of the accepted September 9, 2016 employment injury. Dr. Manspeizer concluded that appellant could return to her date-of-injury job without restrictions.

By decision dated July 22, 2021, OWCP terminated appellant's wage-loss compensation and medical benefits, effective that same date. It found that the special weight of the medical evidence rested with Dr. Manspeizer, the impartial medical examiner (IME), who opined in his May 26, 2021 report that appellant's accepted work-related condition had resolved and she no longer had any disability or residuals as a result of the September 9, 2016 employment injury.

On July 27, 2021 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

OWCP received a July 28, 2021 medical report by Dr. Helbig who reported that appellant was under his care for a September 9, 2016 employment injury. He noted that her magnetic resonance imaging (MRI) scan studies revealed lumbar disc herniations in the lower lumbar spine on two occasions. Dr. Helbig addressed Dr. Manspeizer's May 26, 2021 report, which noted degenerative findings on her lumbosacral MRI scan. He explained that, while these degenerative findings were preexisting, they were clearly aggravated by the work accident. Dr. Helbig further asserted that the disc herniations were non preexisting conditions that were traumatic in nature directly caused by the September 9, 2016 employment injury. He opined that appellant was permanently disabled from her employment as a mail handler and would not be capable of any repetitive bending and lifting, explaining that lifting any more than 10 pounds would be impossible for her to perform.

A hearing was held on November 18, 2021.

By decision dated July 13, 2022, OWCP's hearing representative affirmed the July 22, 2021 decision.

On August 15, 2022 appellant, through counsel, requested reconsideration. Counsel noted submission of medical reports dated July 28, 2021 and August 24, 2022 from Dr. Helbig in support of appellant's claim for continued disability and residuals.

In an August 24, 2022 medical report, Dr. Helbig reported that appellant had been under his care following a September 9, 2016 employment injury. He noted that she had been consistently treated with physical therapy and MRI scan studies of the lumbar spine revealed multilevel disc herniation. Dr. Helbig reported that his most recent examination revealed another flare-up of back pain with radiation and numbness down the left leg, consistent with recurrent left sciatica. He reported no neurologic deficits and recommended appellant continue with a home exercise program. Dr. Helbig opined that appellant was permanently disabled from her employment as a mail handler as she was not capable of repetitive bending and lifting. He further explained that lifting any more than 10 pounds would be impossible for her.

By decision dated February 1, 2023, OWCP denied modification of the July 13, 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 an employee's benefits.<sup>3</sup> After it has been determined that an employee has a disability causally related to his or her employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.<sup>4</sup> Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>5</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.<sup>6</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>7</sup>

Section 8123(a) of FECA provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary

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<sup>3</sup> See *P.B.*, Docket No. 21-0894 (issued February 8, 2023); *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>4</sup> See *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>5</sup> See *P.T.*, Docket No. 21-0328 (issued May 2, 2022); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

<sup>6</sup> *J.W.*, Docket No. 19-1014 (issued October 24, 2019); *L.W.*, Docket No. 18-1372 (issued February 27, 2019).

<sup>7</sup> *T.C.*, Docket No. 20-1163 (issued July 13, 2021); *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002).

shall appoint a third physician who shall make an examination.<sup>8</sup> When there are opposing reports of virtually equal weight and rationale, the case must be referred to an IME, pursuant to section 8123(a) of FECA, to resolve the conflict in the medical evidence.<sup>9</sup> Where a case is referred to an IME for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.<sup>10</sup>

### 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 July 22, 2021, as she no longer had disability or residuals causally related to her accepted September 9, 2016 employment injury.

OWCP determined that there was a conflict in the medical opinion evidence between Dr. Helbig, appellant's treating physician, and Dr. Teja, OWCP's second opinion examiner, as to whether she continued to have disability or residuals causally related to the accepted September 9, 2016 employment injury. It properly referred her, pursuant to 5 U.S.C. § 8123(a), to Dr. Manspeizer for an impartial medical examination and an opinion to resolve the conflict.<sup>11</sup>

In a May 26, 2021 report, Dr. Manspeizer, serving as the IME, reviewed appellant's history of injury, provided physical examination findings, and opined that her current condition was caused by preexisting age-related degenerative disc disease and osteoarthritis, which was not related to the September 9, 2016 employment injury. He further explained that his examination revealed no objective physical findings to indicate cord compression, nerve root impingement, herniated discs, or neurological deficit. Dr. Manspeizer concluded that appellant's work-related condition had resolved, and that no further treatment was medically warranted.

The factors that comprise the evaluation of medical opinion evidence include the opportunity for and thoroughness of physical examination, the accuracy, or completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.<sup>12</sup> The Board finds that the opinion of the IME, Dr. Manspeizer, is entitled to the special weight of the medical opinion evidence and establishes that appellant no longer had employment-related disability or residuals

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<sup>8</sup> 5 U.S.C. § 8123(a). See *M.E.*, Docket No. 21-0281 (issued June 10, 2022); *R.C.*, Docket No. 18-0463 (issued February 7, 2020); see also *G.B.*, Docket No. 16-0996 (issued September 14, 2016).

<sup>9</sup> See *M.E.*, *id.*; *M.R.*, Docket No. 19-0526 (issued July 24, 2019); *C.R.*, Docket No. 18-1285 (issued February 12, 2019).

<sup>10</sup> *M.E.*, *id.*; *P.B.*, Docket No. 20-0984 (issued November 25, 2020); *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001); *James P. Roberts*, 31 ECAB 1010 (1980).

<sup>11</sup> *Supra* note 9.

<sup>12</sup> See *P.J.*, Docket No. 22-0905 (issued November 15, 2022); *K.R.*, Docket No. 22-0019 (issued July 11, 2022); *Nicolette R. Kelstrom*, 54 ECAB 570 (2003); *Anna M. Delaney*, 53 ECAB 384 (2002).

causally related to the accepted September 9, 2016 employment injury. Accordingly, OWCP properly relied on his opinion in terminating her wage-loss compensation and medical benefits.<sup>13</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

Once OWCP properly terminated compensation benefits, the burden shifts to appellant to establish continuing disability on or after that date causally related to the accepted injury.<sup>14</sup> To establish causal relationship between the accepted conditions 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.<sup>15</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that appellant has not met her burden of proof to establish continuing disability or residuals on or after July 22, 2021, causally related to her accepted September 9, 2016 employment injury.

Following the termination of her wage-loss compensation and medical benefits, appellant submitted medical reports dated July 28, 2021 and August 24, 2022 from Dr. Helbig who asserted that the September 9, 2016 employment injury had not resolved and expressed disagreement with Dr. Manspeizer's IME evaluation. He noted that she had objective evidence of multilevel disc herniations as evidenced in diagnostic studies consistent with the September 9, 2016 employment injury. Dr. Helbig further reported that appellant's preexisting degenerative lumbar conditions were aggravated by the employment injury. However, he failed to provide sufficient medical rationale to establish that she had continuing residuals of her accepted lumbar sprain.<sup>16</sup> The Board has held that a report is of limited probative value regarding causal relationship if it does not contain sufficient medical rationale explaining how an employment activity could have caused or aggravated a medical condition.<sup>17</sup> Accordingly, these reports are of limited probative value.

As the medical evidence of record is insufficient to establish continuing work-related disability or residuals causally related to her accepted September 9, 2016 employment injury, the Board finds that appellant has not met her burden of proof.<sup>18</sup>

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<sup>13</sup> *S.V.*, Docket No. 23-0474 (issued August 1, 2023).

<sup>14</sup> *See J.N.*, Docket No. 20-1030 (issued November 20, 2020); *L.C.*, Docket No. 18-1759 (issued June 26, 2019).

<sup>15</sup> *Id.*

<sup>16</sup> *A.V.*, Docket No. 23-0230 (issued July 28, 2023).

<sup>17</sup> *W.C.*, Docket No. 18-1386 (issued January 22, 2019); *D.W.*, Docket No. 18-0123 (issued October 4, 2018); *Melvina Jackson*, 38 ECAB 443 (1987).

<sup>18</sup> *See R.G.*, Docket No. 22-0165 (issued August 11, 2022).

**CONCLUSION**

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective July 22, 2021, as she no longer had disability or residuals causally related to her accepted employment injury. The Board further finds that appellant has not met her burden of proof to establish continuing disability or residuals on or after July 22, 2021 causally related to her accepted employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 1, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 12, 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