

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

J.J., Appellant)	
)	
and)	Docket No. 23-0973
)	Issued: January 2, 2024
U.S. POSTAL SERVICE, INTERNATIONAL)	
SERVICE CENTER NEW YORK NY,)	
Jamaica, NY, Employer)	
)	

Appearances:
James D. Muirhead, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On July 1, 2023² appellant, through counsel, filed a timely appeal from a January 6, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP).³ 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 Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of the last OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. *See* 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days from January 6, 2023, the date of OWCP's decision, was July 5, 2023. Since using July 7, 2023, the date the appeal was received by the Clerk of the Appellate Boards, would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is July 1, 2023, which renders the appeal timely filed. *See* 20 C.F.R. § 501.3(f)(1).

³ The Board notes that, following the January 6, 2023 decisions, OWCP received additional evidence. 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 Act⁴ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.⁵

ISSUE

The issue is whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective January 6, 2023, as she no longer had disability or residuals causally related to her accepted April 4, 2018 employment injury.

FACTUAL HISTORY

On April 8, 2018 appellant, then a 25-year-old mail handler filed a traumatic injury claim (Form CA-1) alleging that on that date she injured her left ankle when she stepped down from a platform and tripped on a hand jack while in the performance of duty. She stopped work on April 8, 2018. OWCP accepted the claim for sprain of the left foot and ankle. It paid appellant wage-loss compensation on the supplemental rolls beginning June 9, 2018, and on the periodic rolls beginning March 30, 2019.

On April 1, 2019 appellant underwent OWCP-authorized left ankle arthroscopy with synovectomy and left lateral ankle ligament reconsideration with internal brace.

Appellant accepted a full-time light-duty position as a modified mail handler on July 2, 2019.

On February 22, 2021 appellant accepted a modified mail handler position working six hours a day; lifting, carrying, pushing, and pulling up to 10 pounds for one hour a day; walking, standing, twisting, and bending for one hour a day; reaching above the shoulder for three hours a day, and sitting with repetitive movements for six hours a day. She stopped work on June 30, 2021.

Beginning on July 1, 2021 appellant's attending physician, Dr. Manoj Sadhnani, a podiatrist, supported her total disability from work and reported findings including pain and weakness after prolonged standing. He diagnosed instability of the left ankle and possible osteochondritis.

On January 21, 2022 OWCP referred appellant, a statement of accepted facts (SOAF), and a series of questions to Dr. Sean Lager, a Board-certified orthopedic surgeon, for a second opinion examination regarding the extent and degree of any employment-related disability, whether appellant was capable of returning to her date-of-injury position, or whether she was a candidate for vocational rehabilitation.

OWCP continued to receive evidence. In a January 11, 2022 report, Dr. Sadhnani recounted appellant's ongoing symptoms of pain and weakness after prolonged standing. He diagnosed left ankle instability and possible osteochondritis of the left ankle. Dr. Sadhnani continued to support total disability and recommended additional physical therapy.

⁴ 5 U.S.C. § 8101 *et seq.*

⁵ Counsel did not appeal the January 9 and April 26, 2023 OWCP decisions. The Board will not address these issues in this appeal. *See* 20 C.F.R. § 501.3.

In a February 21, 2022 report, Dr. Lager recounted appellant's history of injury on April 8, 2018 and performed a physical examination listing a shuffling labored gait and loss of plantar flexion of her left toes. He opined that her subjective complaints did not correspond with his objective findings. Dr. Lager diagnosed left foot and ankle sprain. He related that the work-related condition had resolved as there was no evidence to support that it was still active and causing objective findings. Dr. Lager further related that appellant could return to her date-of-injury position as a mail handler without restrictions. He determined that she did not demonstrate full effort on examination.

In a March 1, 2022 work capacity evaluation (Form OWCP-5c), Dr. Lager indicated that appellant could perform sedentary work lifting up to five pounds for three hours a day.

Dr. Sadhnani completed a note on March 24, 2022 and continued to find that appellant was totally disabled due to her accepted left ankle ligament repair, instability, and possible osteochondritis.

In an April 14, 2022 Form OWCP-5c, Dr. Lager found that appellant could return to her date-of-injury position without restrictions.

Dr. Sadhnani provided a treatment note dated June 4, 2022 and found that appellant was totally disabled.

On September 17, 2022 Dr. Sadhnani continued to recount appellant's pain and weakness after prolonged standing and repeated his diagnoses. He found that she was totally disabled.

On November 22, 2022 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits based on the report of Dr. Lager, the second opinion physician, who found that appellant no longer had any disability or residuals causally related to her accepted employment injury. It afforded her 30 days to submit additional evidence or argument, in writing, if she disagreed with the proposed termination.

Appellant responded on December 8, 2022 and disagreed with Dr. Lager's conclusions. She provided a December 22, 2022 note from Dr. Sadhnani in which he related that appellant had weakness and pain with range of motion and ambulation.

By decision dated January 6, 2023, OWCP finalized the termination of appellant's wage-loss compensation and medical benefits, effective that date. It found that the weight of the medical evidence rested with Dr. Lager, the second opinion physician, who found that appellant no longer had any disability or residuals causally related to her accepted employment injury.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of an employee's benefits.⁶ 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

⁶ *K.T.*, Docket No. 22-1038 (issued June 22, 2023); *M.M.*, Docket No. 17-1264 (issued December 3, 2018); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

the employment.⁷ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁸

Section 8123(a) of FECA provides that if there is a disagreement between the physician making the examination for the United States and the physician of an employee, the Secretary shall appoint a third physician (known as a referee physician or impartial medical examiner (IME)) who shall make an examination.⁹ For a conflict to arise the opposing physicians' viewpoints must be of virtually equal weight and rationale.¹⁰

ANALYSIS

The Board finds that OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation, effective January 6, 2023.

Dr. Sadhnani, in reports dated from July 1, 2021 through December 22, 2022, related that appellant had not fully recovered from her accepted employment injury, and that she remained disabled. He held appellant off work due to continued left ankle and foot pain and weakness. Dr. Sadhnani opined that appellant had poor stamina and was unable to stand for eight hours a day.

Dr. Lager, in his February 21, 2022 report, opined that work-related left foot and ankle sprains had resolved as there was no evidence to support that the work-related conditions were still active and causing objective findings in appellant's subjective symptoms related to the accepted April 8, 2018 employment injury. He provided two OWCP-5c forms. In the first OWCP-5c form dated March 1, 2022, Dr. Lager indicated that appellant could perform sedentary work lifting up to five pounds for three hours a day. He completed a second OWCP-5c form on April 14, 2022 and found that she could return to her date-of-injury position without restrictions.

It is well established that where there are opposing medical reports of virtually equal probative value between an attending physician and a second opinion physician, 5 U.S.C. § 8123(a) requires OWCP to refer the case to a referee physician to resolve the conflict.¹¹ The Board finds that the medical reports of Drs. Lager and Sadhnani are in equipoise on the issue of whether appellant was capable of returning to work, and are thus in conflict. The Board, therefore, finds that OWCP should have resolved this conflict of medical evidence before terminating appellant's wage-loss compensation.¹²

As there is a conflict of medical opinion as to whether appellant was disabled from work, OWCP failed to meet its burden of proof to justify termination of her wage-loss compensation.

⁷ *T.N.*, Docket No. 22-0721 (issued September 14, 2022); *A.T.*, Docket No. 20-0334 (issued October 8, 2020); *E.B.*, Docket No. 18-1060 (issued November 1, 2018).

⁸ *T.N.*, *id.*; *R.L.*, Docket No. 20-1611 (issued September 30, 2022); *C.R.*, Docket No. 19-1132 (issued October 1, 2020); *Del K. Rykert*, 40 ECAB 284 (1988).

⁹ 5 U.S.C. § 8123(a); *R.H.*, Docket No. 20-1442 (issued February 9, 2022); *Q.S.*, Docket No. 20-0701 (issued November 10, 2021).

¹⁰ *R.H.*, *id.*; *Darlene R. Kennedy*, 57 ECAB 414, 416 (2006); *James P. Roberts*, 30 ECAB 1010 (1980).

¹¹ *Id.*

¹² *Id.*

CONCLUSION

The Board finds that OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation, effective January 6, 2023.

ORDER

IT IS HEREBY ORDERED THAT the January 6, 2023 decision of the Office of Workers' Compensation Programs is reversed.

Issued: January 2, 2024
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

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