



related to the accepted March 11, 2014 employment injury; and (2) whether OWCP properly suspended appellant's entitlement to wage-loss compensation benefits, effective August 21, 2023, due to her failure to submit a Form EN-1032, as requested.

### **FACTUAL HISTORY**

On March 11, 2014 appellant, then a 37-year-old vocational nurse, filed a traumatic injury claim (Form CA-1) alleging that, on that date, she injured her back, left shoulder, right knee, and right ankle when she slipped on a creamy substance, which caused her left leg to go forward and her right leg to go backwards, while in the performance of duty. She did not stop work. OWCP assigned OWCP File No. xxxxxx823 and accepted the claim for displacement of lumbar intervertebral disc without myelopathy.<sup>3</sup> It paid appellant wage-loss compensation on the supplemental rolls, effective May 27, 2014, and on the periodic rolls, effective July 27, 2014. Appellant stopped work on April 1, 2015. OWCP subsequently expanded the acceptance of appellant's claim to include bursitis of the right shoulder; major depressive disorder; disorders of tendon of the right shoulder; disorders of tendon of the left shoulder; strain of muscle, fascia, and tendon of the right hip; strain of muscle, fascia, and tendon of the left hip; strain of adductor muscle, fascia, and tendon of the right thigh; strain of adductor muscle, fascia, and tendon of the left thigh; sprain of sacroiliac joint; bilateral post-traumatic osteoarthritis of the hips; post-traumatic osteoarthritis of left knee; secondary hypertension; chronic pain syndrome; complete rotator cuff tear or rupture of the left shoulder; and complete rotator cuff tear or rupture of the right shoulder.

On August 25, 2022 OWCP referred appellant, along with the medical record, a statement of accepted facts (SOAF), and a series of questions, to Dr. George M. Cole, Board-certified in orthopedic surgery, for a second opinion to evaluate her continued disability and residuals. The SOAF provided to Dr. Cole listed all of appellant's conditions accepted under the current claim, as well as conditions accepted under OWCP File No. xxxxxx806, and the referral instructed Dr. Cole to consider the accepted conditions under both file numbers.

In a September 27, 2022 report, Dr. Cole related that appellant was injured when she slipped on something and "did the splits" while at work. He reviewed the medical record and objective testing and presented examination findings. Dr. Cole indicated that physical examination revealed pain behaviors, as well as reduced range of motion (ROM) in the cervical and lumbar spine and shoulders. He noted that magnetic resonance imaging (MRI) scans of the shoulders demonstrated mild tendinosis related to acromioclavicular hypertrophy. Dr. Cole opined that the subjective complaints did not correspond to objective findings. He listed appellant's accepted conditions as sprain of the muscles of the bilateral hips, sprain of the muscles of the bilateral thighs, post-traumatic osteoarthritis of the left knee, secondary hypertension, chronic pain syndrome, displacement of lumbar intervertebral disc, major depressive disorder, bursitis of the right shoulder, other specified disorders of the bilateral shoulders, complete rotator cuff tear of the left shoulder, and complete rotator cuff tear of the right shoulder. Dr. Cole opined

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<sup>3</sup> Appellant previously filed a July 6, 2012 occupational disease claim (Form CA-2) under OWCP File No. xxxxxx806, which OWCP accepted for synovitis and tenosynovitis of the right ankle and foot, posterior tibial tendinitis of the right leg, and right tibialis tendinitis. OWCP has administratively combined OWCP File Nos. xxxxxx806 and xxxxxx823, with the latter serving as the master file.

that his examination did not show any diagnoses causally related to the employment injury, other than reduced ROM of the shoulders, which did not correlate with the MRI scan findings. He further indicated that appellant's sprain/strain injuries to the shoulders, hips, knees, cervical spine, and lumbar spine had resolved. Dr. Cole added that appellant's degenerative conditions in the shoulders, hips, knees, cervical spine, and lumbar spine were consistent with her body habitus. He opined that appellant could return to light-duty work with restrictions regarding her shoulders, but noted that he believed her disability to be related to nonphysiological subjective complaints. He completed a work capacity evaluation (Form OWCP-5c) dated November 5, 2022, in which he indicated that appellant had reached maximum medical improvement and could perform light-duty work with restrictions.<sup>4</sup>

On February 28, 2023 OWCP requested that Dr. Cole clarify his opinion on appellant's work-related disability and residuals.

In a March 7, 2023 supplemental report, Dr. Cole indicated that, though appellant had reduced ROM in her shoulders, there was no "actual reason" for this as no objective clinical finding or diagnostic study showed any significant injury to the shoulders. Dr. Cole thus opined that there was no indication for additional treatment of the bilateral shoulders. He repeated his opinion that appellant could return to work with restrictions on reaching above the shoulder, which he asserted was related to appellant's body habitus and not to any work injuries.

In a March 15, 2023 report, Dr. Javaria Jabeen, an osteopath and family medicine physician, reviewed appellant's history of injury and treatment, provided examination findings, and reviewed diagnostic testing results. She diagnosed intervertebral disc displacement of lumbar region; bursitis of right shoulder; major depressive disorder; disorders of tendon of the right shoulder; disorders of tendon of the left shoulder; strain of muscle, fascia, and tendon of the right hip; strain of muscle, fascia, and tendon of the left hip; strain of adductor muscle, fascia, and tendon of the right thigh; strain of adductor muscle, fascia, and tendon of the left thigh; sprain of sacroiliac joint, bilateral post-traumatic osteoarthritis of the hips; post-traumatic osteoarthritis of the left knee; secondary hypertension; chronic pain syndrome; complete rotator cuff tear or rupture of the left shoulder; and complete rotator cuff tear or rupture of the right shoulder. Dr. Jabeen held appellant off work due to the inability to perform job duties with multiple upper body injuries and lower extremity tearing. She recommended physical therapy and surgical interventions to the wrist, elbow, shoulder joint, spinal region, and bilateral knees.

On March 22, 2023 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits for her orthopedic conditions based on Dr. Cole's opinion that the accepted March 11, 2014 orthopedic conditions had ceased without disability or residuals. It afforded her 30 days to submit additional evidence or argument, in writing, if she disagreed with the proposed termination.

Appellant continued to submit medical evidence, including a May 3, 2023 report from Dr. Robert Spicer, a Board-certified psychiatrist, who diagnosed intervertebral disc displacement of the lumbar region; bursitis of the right shoulder; disorders of tendon of the right shoulder;

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<sup>4</sup> In a December 16, 2022 second opinion report, Dr. Irina Gromov, a Board-certified psychiatrist, opined that appellant was unable to return to work due to her chronic depression and chronic pain.

disorders of tendon of left shoulder; strain of muscle, fascia, and tendon of the right hip; strain of muscle, fascia, and tendon of the left hip; sprain of sacroiliac joint; bilateral post-traumatic osteoarthritis of the hips; post-traumatic osteoarthritis of the left knee; chronic pain syndrome; complete rotator cuff tear or rupture of the left shoulder; and complete rotator cuff tear or rupture of the right shoulder. He advised that, though permanent residuals were probable, he expected continued improvement with ongoing physical therapy.

By decision dated June 7, 2023, OWCP finalized the termination of appellant's wage-loss compensation and medical benefits, effective on that date. It found that the weight of the medical evidence rested with Dr. Cole's second opinion.

OWCP periodically requested that appellant submit financial disclosure statements (Form EN-1032), which solicited information regarding her employment, volunteer work, dependent(s) status, receipt of other federal benefits and/or payments, and third-party settlements.

In a July 20, 2023 letter, OWCP informed appellant that federal regulations required her to execute an affidavit relative to any earnings or employment during the previous 15 months and that a Form EN-1032 was enclosed for that purpose. It notified her that she must fully answer all questions on the enclosed Form EN-1032 and return it within 30 days, or her benefits would be suspended. OWCP mailed the notice to appellant's last known address of record. No response was received within the time allotted.

By decision dated August 21, 2023, OWCP suspended appellant's wage-loss compensation benefits effective that date, due to her failure to submit the Form EN-1032, as requested. It noted that, if she completed and returned the enclosed copy of the Form EN-1032 as requested, her compensation benefits would be restored retroactively to the date they were suspended.

### **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>5</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>6</sup> Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>7</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.<sup>8</sup> To terminate authorization for medical treatment, OWCP

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<sup>5</sup> *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).

<sup>6</sup> *See 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).

<sup>7</sup> *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

<sup>8</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).

must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.<sup>9</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's medical benefits for her orthopedic conditions, effective June 7, 2023.

Dr. Cole's opinion contradicts the SOAF, which listed all of appellant's conditions accepted under the current claim, as well as conditions accepted under OWCP File No. xxxxxx806, and the referral, which instructed Dr. Cole to consider the accepted conditions under both file numbers. In his September 27, 2022 report, Dr. Cole opined that the accepted work-related sprain/strain injuries to the shoulders, hips, knees, cervical spine, and lumbar spine had resolved. He added that appellant's degenerative conditions in the cervical spine, lumbar spine, shoulders, knees, and hips were consistent with her body habitus. Dr. Cole opined that appellant could return to light-duty work with restrictions regarding her shoulders, but noted that he believed her disability to be related to nonphysiological subjective complaints. In his March 7, 2023 supplemental report, he indicated that, though appellant had reduced ROM in her shoulders, there was no "actual reason" for this as no objective clinical finding or diagnostic study showed any significant injury to the shoulders. He thus opined that there was no indication for additional treatment of the bilateral shoulders. Dr. Cole repeated his opinion that appellant could return to work with restrictions on reaching above the shoulder, which he asserted was related to her body habitus and not to any work injuries. However, he did not acknowledge appellant's accepted conditions of sprain of sacroiliac joint and bilateral post-traumatic osteoarthritis of the hips. Dr. Cole also did not acknowledge appellant's accepted right lower extremity conditions under OWCP File No. xxxxxx806, as advised by the SOAF.

OWCP's procedures provide that when an OWCP district medical adviser (DMA), second opinion specialist, or referee physician renders a medical opinion based on a SOAF, which is incomplete or inaccurate, or does not use the SOAF as the framework in forming their opinion, the probative value of the opinion is seriously diminished or negated altogether.<sup>10</sup> Dr. Cole's opinion contradicted the SOAF as he did not consider all of appellant's accepted orthopedic conditions. As he did not use the SOAF as the framework for his opinion, it is of diminished probative value.<sup>11</sup> The Board thus finds that OWCP failed to meet its burden of proof to terminate appellant's compensation.

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<sup>9</sup> See *A.G., id.*; *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002).

<sup>10</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3 (October 1990).

<sup>11</sup> *Id.* See also *A.D.*, Docket No. 20-0553 (issued April 19, 2021); *J.R.*, Docket No. 19-1321 (issued February 7, 2020); *M.D.*, Docket No. 18-0468 (issued September 4, 2018); *Paul King*, 54 ECAB 356 (2003).

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

FECA authorizes the Secretary of Labor to require a partially disabled employee to report their earnings from employment or self-employment, by affidavit or otherwise, in the manner and at the times the Secretary specifies.<sup>12</sup>

Under section 10.528 of OWCP's implementing federal regulations, an employee in receipt of compensation benefits must complete an affidavit as to any work or activity indicating an ability to work which the employee has performed for the prior 15 months.<sup>13</sup> If an employee who is required to file such a report fails to do so within 30 days of the date of the request, their right to compensation for wage loss is suspended until OWCP receives the requested report. At that time, OWCP will reinstate compensation retroactive to the date of suspension if the employee remains entitled to compensation.<sup>14</sup>

## **ANALYSIS -- ISSUE 2**

The Board finds that OWCP properly suspended appellant's entitlement to wage-loss compensation benefits, effective August 21, 2023, due to her failure to complete a Form EN-1032, as requested.

On July 20, 2023 OWCP provided appellant with a Form EN-1032 and notified her that federal regulations required her to complete the form and answer all questions concerning her employment or earnings. It properly notified her that, if she did not completely answer all questions and return the statement within 30 days, her benefits would be suspended. The Board has held that, absent evidence to the contrary, a notice mailed in the ordinary course of business is presumed to have been received by the intended recipient.<sup>15</sup> The presumption is commonly referred to as the "mailbox rule."<sup>16</sup> The record reflects that OWCP's letter was properly sent to appellant's address of record and there is no indication that it was returned as undeliverable.

The record establishes that appellant did not submit a completed Form EN-1032 prior to the August 21, 2023 OWCP decision suspending her benefits. Thus, the Board finds that OWCP properly suspended her entitlement to compensation benefits, effective August 21, 2023, pursuant to 20 C.F.R. § 10.528.<sup>17</sup>

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<sup>12</sup> *Supra* note 1 at § 8106(b).

<sup>13</sup> 20 C.F.R. § 10.528.

<sup>14</sup> *Id.*; *see also id.* at § 10.525.

<sup>15</sup> *E.G.*, Docket No. 20-1184 (issued March 1, 2021); *R.L.*, Docket No. 20-0186 (issued September 14, 2020); *Claudia J. Whitten*, 52 ECAB 483 (2001).

<sup>16</sup> *L.L.*, Docket No. 21-1194 (issued March 18, 2022); *C.C.*, Docket No. 17-0043 (issued June 15, 2018); *A.H.*, Docket No. 15-0241 (issued April 3, 2015).

<sup>17</sup> *See B.F.*, Docket No. 22-0585 (issued October 20, 2022); *W.L.*, Docket No. 18-1051 (issued March 24, 2021); *see also James A. Igo*, 49 ECAB 189 (1997).

### **CONCLUSION**

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective June 7, 2023. The Board further finds that OWCP has met its burden of proof to suspend appellant's entitlement to wage-loss compensation benefits, effective August 21, 2023, due to her failure to submit a Form EN-1032, as requested.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the June 7, 2023 decision of the Office of Workers' Compensation Programs is reversed. The August 21, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 12, 2024  
Washington, DC

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

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

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