

³ The Board notes that following the September 6, 2024 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.*

ISSUES

The issues are (1) whether OWCP properly determined that appellant's exacerbation of preexisting adjustment disorder had resolved as of September 13, 2023; and (2) whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective December 4, 2023, as she no longer had disability or residuals causally related to her accepted June 12, 2003 right knee contusion and cervical and left wrist sprains.

FACTUAL HISTORY

This case has previously been before the Board.⁴ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On June 16, 2003 appellant, then a 42-year-old claims examiner, filed a traumatic injury claim (Form CA-1) alleging that on June 12, 2003 she sustained injuries to her head, cheek, lip, wrist, neck, shoulder, and knee when she tripped after her sandal caught in a rug, and head struck against a file cabinet as she fell to the floor while in the performance of duty. OWCP assigned this claim Docket No. xxxxxx210 and accepted it for cervical sprain, left wrist sprain, and right knee contusion.⁵ By decision dated February 18, 2004, it accepted appellant's claim for a recurrence of disability commencing January 6, 2004. OWCP paid her wage-loss compensation on the supplemental rolls commencing August 27, 2003, and on the periodic rolls from May 16, 2004 through September 27, 2018.

On June 13, 2018 OWCP referred appellant, a statement of accepted facts (SOAF), and the medical record, to Dr. Andrew Farber, an osteopath Board-certified in orthopedic surgery, for a second opinion evaluation to determine whether she continued to have disability or residuals causally related to her accepted June 12, 2003 employment injury.

In a July 9, 2018 report, Dr. Farber reviewed the medical record and SOAF. He noted that OWCP had accepted the claim for right knee contusion, cervical sprain and left wrist sprain. On examination, Dr. Farber noted mild lower cervical paraspinal tenderness, no bilateral knee tenderness, negative bilateral Lachman's test, and negative bilateral McMurray's tests. He opined that appellant was suffering from cervical sprain, right knee contusion, and left wrist sprain. Dr. Farber concluded that the accepted conditions of cervical sprain, left wrist sprain, and right knee contusion had resolved. He noted that a 2003 magnetic resonance imaging (MRI) scan of the cervical spine showed some disc disease, which he opined was likely degenerative. Dr. Farber indicated that appellant was able to return to work with no restrictions.

⁴ Docket No. 20-0024 (issued September 1, 2020).

⁵ On January 30, 2004 appellant filed an occupational disease claim (Form CA-2) alleging that on August 31, 2003 she developed parvovirus due to factors of her federal employment. She alleged that she was exposed to the virus by a coworker, who sat across from and shared her computer and telephone. OWCP assigned that claim OWCP File No. xxxxxx784 and accepted it for parvovirus. OWCP File No. xxxxxx784 has been administratively combined with OWCP File No. xxxxxx210, the latter serving as the master file.

By notice dated August 22, 2018, OWCP advised appellant that it proposed to terminate her wage-loss compensation and medical benefits based on Dr. Farber's opinion that the accepted conditions had ceased without residuals.

By decision dated September 28, 2018, OWCP terminated appellant's wage-loss compensation and medical benefits, effective that date, finding that Dr. Farber's report was entitled to the weight of the medical evidence.

In a report dated December 13, 2018, Ilana Reich, Ph.D., a clinical psychologist, detailed a history of appellant's June 12, 2003 employment injury and noted that she contracted parvovirus from a coworker. She found that appellant's current condition was causally related to the parvovirus and to the accepted June 12, 2003 employment injury because she had good attendance prior to that. A psychological examination was performed where she noted mild degree of conceptual disorganization and a depressed, anxious, and irritable mood. Dr. Reich diagnosed adjustment disorder with depressed mood and other reactions to stress. She found that appellant was unemployable due to her physical restrictions and inability to concentrate or focus on the tasks at hand with or without medication.

On January 17, 2019 appellant, through counsel, requested reconsideration and asserted that OWCP had improperly terminated appellant's wage-loss compensation and medical benefits based on Dr. Farber's opinion.

By decision dated April 16, 2019, OWCP denied modification of the September 28, 2018 termination decision.

Appellant filed an appeal with the Board. By decision dated September 1, 2020, the Board reversed the April 16, 2019 decision terminating appellant's wage-loss compensation and medical benefits.⁶ The Board found that Dr. Farber's opinion was internally inconsistent and conclusory in nature and, thus, it was insufficient justify the termination of appellant's wage-loss compensation and medical benefits.

In a report dated May 12, 2021, Dr. Lee Magenheim, a chiropractor, related that he had treated appellant for cervical spine injuries. On physical examination, he reported moderate-to-severe cervical musculature myospasm, marked painful and decreased cervical range of motion, decreased C5-6 dermatome on the left, absent left bicep reflex, and positive bilateral Jackson's compression test. Dr. Magenheim diagnosed cervical disc herniation with radiculopathy, cervical subluxation, and narrowing spinal canals at C5-7. He concluded that appellant was permanently disabled from performing her date-of-injury job duties.

In a May 17, 2021 report, Dr. Reich diagnosed adjustment disorder with depressed mood and other reaction to severe stress. She found appellant permanently and totally disabled. Dr. Reich noted appellant was precluded from sitting, standing, or lifting due to her physical problems. Moreover, appellant's pain and medical conditions prevented her from being logical and consistent. Dr. Reich explained that appellant's depression and anxiety were debilitating to the point of inability to perform any work.

⁶ *Supra* note 4.

On April 6, 2023 OWCP referred appellant, a SOAF, and the medical record, and a series of questions to Dr. Michael F. Laikin, a Board-certified psychiatrist, for an opinion on the nature of her condition, the extent of any disability, and appropriate treatment recommendations.

In a June 15, 2023 report, Dr. Laikin recounted appellant's history of injury, noted review of the medical records, and the SOAF. He diagnosed exacerbation of preexisting adjustment disorder, which had returned to baseline. Dr. Laikin reported that appellant exhibited no objective findings of anxiety or depression during his examination. He further related normal concentration and attention, intact recent and remote memory, no signs of organic mental syndrome, no signs of post-traumatic stress disorder due to the accepted June 12, 2003 employment injury, and no signs of psychosis, delusions, hallucinations, phobias, or obsessions. Dr. Laikin opined that appellant was capable from a psychiatric perspective of performing her date-of-injury job.

Dr. Magenheim, in a July 7, 2023 report, noted appellant had been treated for neck and back injuries since May 5, 2014. He found that appellant continued to have residual neck pain due to straightening of her cervical spine from her 2003 injury.

On August 22, 2023 OWCP referred appellant, along with a SOAF, the medical record, and a series of questions to Dr. Leon Sultan, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine whether she continued to have disability or residuals from her accepted June 12, 2003 employment injury.

By decision dated September 13, 2023, OWCP expanded the acceptance of appellant's claim to include exacerbation of preexisting adjustment disorder, as resolved.

In a report dated October 11, 2023, Dr. Sultan recounted a history of injury, reviewed medical evidence and SOAF, and provided examination findings. On physical examination of the right knee, he reported no knee joint effusion, mobile knee patella, intact collateral and cruciate ligaments, negative patellofemoral compression test, and no abnormal patellofemoral crepitus was detected during motion testing. An examination of appellant's left wrist revealed no localized swelling, deformity or discoloration, and no complaints of pain on palpation. Next, Dr. Sultan provided cervical examination findings which included no active paracervical muscle spasm, no trigger point on palpation over the bilateral trapezial muscle groups, normal range of motion, and normal sensation in both upper extremities. He observed the lack of any clinical correlation between appellant's right knee complaints and his examination findings. Dr. Sultan opined that appellant's accepted conditions had resolved. In support of this conclusion, he explained that his physical examination did not confirm any objective evidence supporting that the accepted conditions were still active. Dr. Sultan further found that appellant was capable of returning to her date-of-injury position with no restrictions.

On November 2, 2023 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits as the weight of the medical evidence established that she no longer had any disability or residuals causally related to her accepted June 12, 2003 employment injury. It afforded her 30 days to submit additional evidence or argument if she disagreed with the proposed termination.

By decision December 4, 2023, OWCP terminated appellant's wage-loss compensation and medical benefits, effective that date, finding that the weight of the medical evidence rested with Drs. Sultan and Laikin.

On September 4, 2024 appellant, through counsel, requested reconsideration of the September 13, 2023 decision, asserting that appellant sustained a permanent aggravation of her preexisting adjustment disorder. In support thereof, appellant resubmitted reports from Dr. Reich dated December 13, 2018 and May 17, 2021.

By decision dated September 6, 2024, OWCP denied modification of the December 4, 2023 decision. It found that the medical evidence of record was sufficient to establish that appellant's emotional and physical conditions had resolved.

LEGAL PRECEDENT -- ISSUES 1 & 2

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of an employee's benefits.⁷ 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.⁸ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁹

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.¹⁰ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.¹¹

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant's exacerbation of preexisting adjustment disorder had resolved as of September 13, 2023.

In a June 15, 2023 report, Dr. Laikin recounted appellant's history of injury, noted review of the medical records, and the SOAF. He diagnosed exacerbation of preexisting adjustment

⁷ See *J.P.*, Docket No. 23-0075 (issued August 22, 2024); *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).

⁸ See *J.P.*, *id.*; *R.P.*, *id.*; *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

⁹ *J.P.*, *id.*; *K.W.*, Docket No. 19-1224 (issued November 15, 2019); see *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

¹⁰ *P.G.*, Docket No. 24-0437 (issued June 26, 2024); *J.W.*, Docket No. 19-1014 (issued October 24, 2019); *L.W.*, Docket No. 18-1372 (issued February 27, 2019).

¹¹ *P.G.*, *id.*; *L.S.*, Docket No. 19-0959 (issued September 24, 2019); *R.P.*, Docket No. 18-0900 (issued February 5, 2019).

disorder, which had returned to baseline. Dr. Laikin reported that appellant exhibited no objective findings of anxiety or depression during his examination. He further related normal concentration and attention, intact recent and remote memory, no signs of organic mental syndrome, no signs of post-traumatic stress disorder due to the accepted June 12, 2003 employment injury, and no signs of psychosis, delusions, hallucinations, phobias, or obsessions. Dr. Laikin opined that appellant was capable from a psychiatric perspective of performing her date-of-injury job. His opinion was sufficiently rationalized and was based on a proper history and physical examination findings. The Board, therefore, finds that OWCP properly relied upon Dr. Laikin's opinion that while appellant's preexisting exacerbation of adjustment disorder was work related, it had resolved as of July 5, 2023.¹²

Appellant submitted reports dated May 16 and December 13, 2018, and May 17, 2021 from Dr. Reich, appellant's treating psychologist, who diagnosed adjustment disorder with depressed mood and other reactions to severe stress. Dr. Reich found appellant totally and permanently disabled from work; however, her most recent report was dated more than two years prior to Dr. Laikin's second opinion report. The Board has held that stale medical evidence cannot form the basis for current evaluation of residual symptomology or disability determination.¹³ Dr. Reich's reports are, therefore, insufficient to overcome the weight of the medical evidence accorded to Dr. Laikin's second opinion, or to create a conflict of medical opinion.¹⁴

ANALYSIS -- ISSUE 2

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective December 4, 2023, as she no longer had disability or residuals causally related to her accepted June 12, 2003 right knee contusion and cervical and left wrist sprains.

OWCP referred appellant to Dr. Sultan for a second opinion evaluation to determine the status of appellant's accepted physical conditions and work capacity. In his August 11, 2023 report, Dr. Sultan reported that appellant had no objective findings on physical examination. Regarding appellant's right knee, he reported no knee joint effusion, mobile knee patella, intact collateral and cruciate ligaments, negative patellofemoral compression test, and no abnormal patellofemoral crepitus. Examination of appellant's left wrist revealed no localized swelling, deformity or discoloration, and no complaints of pain on palpation. Appellant's cervical examination found no active paracervical muscle spasm, no trigger point on palpation over the bilateral trapezial muscle groups, normal range of motion, and normal sensation in both upper extremities. Dr. Sultan therefore opined that appellant's accepted physical conditions had resolved and concluded that he was capable of returning to her date-of-injury position with no restrictions. His opinion was sufficiently rationalized and was based on a proper history and physical

¹² *A.M.*, Docket No. 24-0219 (issued April 15, 2024); *P.G.*, *supra* note 10.

¹³ *S.H.*, Docket No. 18-1297 (issued January 3, 2019); *see K.S.*, Docket No. 15-1082 (issued April 18, 2017); *see also K.S.*, Docket No. 15-1082 (issued April 18, 2017); *see Keith Hanselman*, 42 ECAB 680 (1991); *Ellen G. Trimmer*, 32 ECAB 1878 (1981) (reports almost two years old deemed invalid basis for disability determination).

¹⁴ *C.Y.*, Docket No. 25-0149 (issued February 14, 2025); *P.R.*, Docket No. 18-0022 (issued April 9, 2018).

examination findings. The Board, therefore, finds that OWCP properly accorded the weight of the medical evidence regarding appellant's physical conditions to Dr. Sultan.¹⁵

Appellant submitted reports from Dr. Magenheimer, a chiropractor, who found that appellant continued to have residual neck pain from her 2003 employment injury. However, section 8101(2) of FECA provides that chiropractors are considered physicians "only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary."¹⁶ Thus, where a diagnosis of subluxation based on x-rays has not been made, a chiropractor is not considered a "physician" under FECA, and his or her reports cannot be considered as competent medical evidence under FECA.¹⁷ Dr. Magenheimer did not render a diagnosis of subluxation as demonstrated by x-ray. Thus, this evidence does not constitute competent medical evidence and is of no probative value.¹⁸

As the weight of the medical evidence establishes that appellant no longer had employment-related disability or residuals as of December 4, 2023 causally related to the accepted right knee contusion and cervical and left wrist sprains, the Board finds that OWCP met its burden of proof.

CONCLUSION

The Board finds that OWCP properly determined that appellant's exacerbation of preexisting adjustment disorder had resolved as of September 13, 2023. The Board further finds that OWCP met its burden of proof to terminate her wage-loss compensation and medical benefits, effective December 4, 2023, as she no longer had disability or residuals causally related to her accepted June 12, 2003 right knee contusion and cervical and left wrist sprains.

¹⁵ *P.G.*, *supra* note 10; *S.V.*, Docket No. 23-0474 (issued August 1, 2023); *R.L.*, Docket No. 22-1175 (issued May 11, 2023); *D.L.*, Docket No. 22-0161 (issued March 10, 2023); *J.T.*, Docket No. 20-1470 (issued October 8, 2021).

¹⁶ 5 U.S.C. § 8101(2); 20 C.F.R. § 10.311; *see also P.G.*, Docket No. 23-0195 (issued August 15, 2023); *Mary A. Ceglia*, 55 ECAB 626 (2004); *Sean O Connell*, 56 ECAB 195 (2004).

¹⁷ *Id.*, *see also S.C.*, Docket No. 25-0155 (issued January 16, 2025); *Susan M. Herman*, 35 ECAB 669 (1984).

¹⁸ *Id.*, *see also I.D.*, Docket No. 25-0021 (issued November 20, 2024).

ORDER

IT IS HEREBY ORDERED THAT the September 6, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 3, 2025
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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