

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

<p>C.H., Appellant</p> <p>and</p> <p>U.S. POSTAL SERVICE, BOGGS ROAD POST OFFICE, Duluth, GA, Employer</p>)	Docket No. 25-0563
)	Issued: August 6, 2025
))
))

Appearances:

Wayne Johnson, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 20, 2025 appellant, through counsel, filed a timely appeal from an April 11, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

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 an 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 5 U.S.C. § 8101 *et seq.*

³ The Board notes that following the April 11, 2025 decision, appellant submitted additional evidence to OWCP. 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 has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective March 28, 2024, as she no longer had disability or residuals causally related to her accepted April 27, 2021 employment injury; and (2) whether appellant has met her burden of proof to establish continuing disability or residuals, on or after March 28, 2024, causally related to her accepted April 27, 2021 employment injury.

FACTUAL HISTORY

On June 22, 2021 appellant, then a 56-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on April 27, 2021 she injured her back when delivering heavy packages while in the performance of duty. She stopped work on May 27, 2021 and returned to work on June 8, 2021. On August 12, 2021 OWCP accepted the claim for strain of muscle, fascia and tendon of lower back; and strain of muscle and tendon of back wall of thorax. It subsequently expanded the acceptance of the claim to include intervertebral disc disorders with radiculopathy. OWCP paid appellant wage-loss compensation on the supplemental rolls, for the period September 1 through 29, 2021 and commencing March 21, 2023.

The record reflects that since October 3, 2021 appellant had been working full-time light duty. On April 8, 2023 she began working two hours a day due to increased work restrictions from her physician.

On August 3, 2023 OWCP referred appellant, a statement of accepted facts (SOAF), and a series of questions to Dr. Alexander Doman, an orthopedic surgeon, for a second opinion examination regarding the extent and degree of any employment-related residuals or disability, and whether she was capable of returning to her date-of-injury position.

In a September 7, 2023 report, Dr. Doman recounted appellant's history of the April 27, 2021 employment injury and her medical treatment. He performed a physical examination, noting that there were findings of symptom magnification on multiple tests during the examination. As the physical examination contained no objective findings, Dr. Doman opined that the work-related diagnoses had fully resolved with no need for further treatment. He also opined that appellant was capable of returning to her date-of-injury position without restrictions and completed a work-capacity evaluation (Form OWCP-5c).

In a September 15, 2023 report, Dr. Konstantin Tsymbalov, an osteopath Board-certified in physiatry, presented examination findings and diagnosed lower back pain, radiculopathy, chronic pain syndrome, muscle spasm of back, polyneuropathy, unspecified; left hip pain and spinal enthesopathy, lumbosacral region. In September 15, 2023 duty status report (Form CA-17), he opined that appellant could only work two hours a day with restrictions because of her lower back pain/radiculopathy.

On October 4, 2023 OWCP declared a conflict in medical opinion between Drs. Tsymbalov and Doman regarding appellant's ability to work. On October 13, 2023 it referred appellant, along with the medical record, a SOAF, and a series of questions to Dr. John Evans, a Board-certified orthopedic surgeon, for an impartial medical examination to resolve the conflict in the medical opinion evidence.

In a March 21, 2023 report, Dr. Tracy C. Harbut, a Board-certified anesthesiologist, noted the history of the April 2021 work injury, findings on a July 3, 2021 magnetic resonance imaging (MRI) and physical findings of left lower extremity weakness. She diagnosed lumbar radicular pain and sacroiliitis. Dr. Harbut opined that as appellant symptoms were aggravated by prolonged walking or standing, lifting, and lateral rotation of the spine, this limited her duties at work and interfered with her ability to perform household chores.

In a November 16, 2023 Form CA-17, Dr. Tsymbalov continued to opine that appellant could only work two hours a day with restrictions because of her lower back pain/radiculopathy.

In a December 14, 2023 report, Dr. Evans, the impartial medical examiner (IME), reviewed the SOAF, the medical records, and described the employment injury. He performed a physical examination and provided an impression of non-specific chronic or chronic recurrent low back pain (also known as chronic sprain/strain, symptomatic degenerative disc disease, facet joint pain, SI joint dysfunction, *etc.*) with no objective findings. Dr. Evans opined that the work-related conditions had resolved and appellant was capable of returning to her rural carrier associate position without restrictions. He indicated that appellant's present level of disability was not a direct result of the accepted work-related condition. Dr. Evans explained that the dating of appellant's symptoms/disability to the work incident was subjective and not supported by objective findings that could relate her symptoms to the incident. He indicated that an objective basis for relating the MRI findings to the work-related incident had not been recorded in the record, noting that the findings were more likely related to age, gender and a progression of previous changes and that none of the risk factors for chronic low back pain had been investigated or ruled out as possible causes of her complaints. Dr. Evans completed a Form OWCP-5c dated December 14, 2023.

On February 21, 2024 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits based on the report of Dr. Evans, the IME, who found that appellant no longer had 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.

In CA-17 forms dated February 26 and March 22, 2024, Dr. Tsymbalov opined that appellant could work eight hours a day with restrictions.

By decision dated March 28, 2024, 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. Evans, the IME, who found that appellant no longer had disability or residuals causally related to her accepted employment injury.

On March 28, 2025 appellant, through counsel, requested reconsideration. She objected to Dr. Evans' selection as the IME and argued that his report was not entitled to any weight.

OWCP received additional evidence, including an August 8, 2023 diagnostic laboratory report.

In an April 19, 2024 Form CA-17, Dr. Tsymbalov continued to diagnose lumbar radiculopathy and opine that appellant could work eight hours a day with restrictions.

In a January 7, 2025 assessment report and in January 18 and February 17, 2025 CA-17 forms, Dr. Omar Nieves, a chiropractor, diagnosed bilateral sciatica due to the April 27, 2021 work injury. He opined that appellant could work with restrictions.

In a February 26, 2024 report, Dr. Tsymbalov noted that appellant had severe lumbosacral radiculopathy when she was evaluated on June 12, 2023. He indicated that the clinic faced significant challenges obtaining authorization for epidural steroid injections, noting that appellant was in pain and could not walk straight and that she was provided with opioid and non-opioid management to manage the pain. Dr. Tsymbalov noted the history of the 2021 work injury indicated that the severity of her pain was worse and she was less functional. He opined that the main pain etiology was likely related to the lumbar spondylosis with facet arthropathy and radiculopathy and radiculopathy, bilateral sacroiliitis and left greater bursitis.

In medical reports dated January 31 and February 28, 2025, Dr. Tsymbalov noted appellant's examination findings and provided an assessment of lower back pain likely related to lumbar spondylosis with radiculopathy, sacroiliitis and left greater enteric bursitis. Progress reports from Dr. Tsymbalov dated November 1, 2024 to the present were also received.

By decision dated April 11, 2025, OWCP denied modification of its March 28, 2024 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

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 IME) who shall make an examination.⁷

⁴ *L.B.*, Docket No. 25-0474 (issued May 19, 2025); *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).

⁵ *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).

⁶ *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).

⁷ 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).

For a conflict to arise, the opposing physicians' viewpoints must be of virtually equal weight and rationale.⁸

In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁹

ANALYSIS -- ISSUE 1

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective March 28, 2024.

OWCP accepted that appellant sustained strain of muscle, fascia and tendon of lower back; strain of muscle and tendon of back wall of thorax; and intervertebral disc disorders with radiculopathy as a result of her April 27, 2021 work injury. It determined that a conflict in medical opinion evidence arose between Dr. Tsymbalov, her attending physician, and Dr. Doman, an OWCP second opinion physician, as to extent of appellant's employment-related conditions and continuing employment-related disability and/or residuals. It properly referred appellant to Dr. Evans to resolve the conflict in medical opinion, pursuant to 5 U.S.C. § 8123(a).¹⁰

In a December 14, 2023 report, Dr. Evans reviewed the SOAF, the medical records, and described the employment injury. He performed a physical examination and provided an impression of non-specific chronic or chronic recurrent low back pain (also known as chronic sprain/strain, symptomatic degenerative disc disease, facet joint pain, SI joint dysfunction, etc.) with no objective findings. Dr. Evans opined that the work-related conditions had resolved and appellant was capable of returning to her rural carrier associate position without restrictions. In support of his opinion, he explained that there was no objective evidence that related appellant's conditions or disability to the accepted work incident as the dating of appellant's symptoms/disability to the work injury was subjective. Dr. Evans further explained that there was no objective basis for relating the MRI findings to the work-related injury, as the findings were more likely related to age, gender, and a progression of previous changes, and that none of the risk factors for chronic low back pain had been investigated or ruled out as causes of her complaints. However, the SOAF listed appellant's accepted conditions as strain of muscle, fascia and tendon of lower back; strain of muscle and tendon of back wall of thorax; and intervertebral disc disorders with radiculopathy.

⁸ *R.H.*, *id.*; *Darlene R. Kennedy*, 57 ECAB 414, 416 (2006); *James P. Roberts*, 30 ECAB 1010 (1980).

⁹ See *N.M.*, Docket No. 24-0663 (issued February 18, 2025); *T.L.*, Docket No. 23-0798 (issued January 12, 2024); *J.P.*, Docket No. 23-0075 (issued March 26, 2023); *C.M.*, Docket No. 20-1647 (issued October 5, 2021); *James P. Roberts*, *id.*

¹⁰ *Supra* note 9; *L.B.*, Docket No. 25-0474 (issued May 19, 2025); *R.H.*, Docket No. 20-1442 (issued February 9, 2022); *Q.S.*, Docket No. 20-0701 (issued November 10, 2021).

The Board has long held that the report of an IME who disregards a critical element of the SOAF is defective and insufficient to resolve the existing conflict of medical opinion evidence.¹¹ The Board finds that Dr. Evans' report is, therefore, not entitled to the special weight as an IME.

The Board, therefore, finds that OWCP improperly terminated appellant's wage-loss compensation and medical benefits, effective March 28, 2024.¹²

CONCLUSION

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective March 28, 2024.¹³

ORDER

IT IS HEREBY ORDERED THAT the April 11, 2025 decision of the Office of Workers' Compensation Programs is reversed.

Issued: August 6, 2025
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

¹¹ *W.S.*, Docket No. 25-0102 (issued December 25, 2024); *W.F.*, Docket No. 18-0653 (issued September 26, 2019); *B.B.*, Docket No. 18-1121 (issued January 8, 2019); *V.C.*, Docket No. 14-1912 (issued September 22, 2015).

¹² *W.S.*, *id.*

¹³ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.