

<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 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.

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.<sup>3</sup>

### **ISSUES**

The issues are: (1) whether OWCP met its burden of proof to terminate appellant's entitlement to medical benefits for a right hip contusion, aggravation of intervertebral disc disorder with myelopathy at L4-5 and L5-S1, and aggravation of chronic right rotator cuff tear, effective November 13, 2019, as he no longer had residuals of these conditions causally related to his accepted September 24, 2018 employment injury; and (2) whether appellant has met his burden of proof to establish continuing residuals of his right hip contusion, aggravation of intervertebral disc disorder with myelopathy at L4-5 and L5-S1, and aggravation of chronic right rotator cuff tear, on or after November 13, 2019, causally related to the accepted September 24, 2018 employment injury.

### **FACTUAL HISTORY**

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

On September 27, 2018 appellant, then a 47-year-old transportation security officer (screener), filed a traumatic injury claim (Form CA-1) alleging that on September 24, 2018 he injured his right shoulder, hip, and wrist, as well as his lower back, when he fell backwards out of a chair while operating an x-ray machine while in the performance of duty.<sup>5</sup> OWCP accepted the claim for contusion of right hip, and unspecified sprain of right wrist. It subsequently expanded the acceptance of appellant's claim to include aggravation of intervertebral disc disorders with myelopathy, lumbar region, L4-5 and L5-S1, and aggravation of chronic rotator cuff tear or rupture, right shoulder. OWCP paid him wage-loss compensation on the supplemental rolls, effective November 9, 2018, and on the periodic rolls, effective February 3, 2019.

In reports dated February 22 and March 22, 2019, Dr. Robert R. Reppy, an osteopath Board-certified in family practice, recounted appellant's history of injury and treatment. He related appellant's symptoms of sciatica with pain radiating to both lower extremities, and several

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<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that, following the December 13, 2024 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedures* 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.*

<sup>4</sup> *Order Remanding Case*, Docket No. 22-0295 (issued June 9, 2022).

<sup>5</sup> OWCP assigned the present claim OWCP File No. xxxxxx589. Previously, OWCP accepted a November 15, 2005 right shoulder sprain under OWCP File No. xxxxxx217; a March 28, 2006 left knee sprain and left meniscal tear under OWCP File No. xxxxxx948; and a September 15, 2007 neck sprain and sprain of the left shoulder, rotator cuff under OWCP File No. xxxxxx575. OWCP has not administratively combined appellant's claims.

incidents of his legs buckling. Dr. Reppy diagnosed intervertebral disc disorder with myelopathy, and complete rotator cuff tear of the right shoulder. He prescribed physical therapy.

In reports dated April 9, 2019, Dr. Royce E. Hood, Jr., a Board-certified orthopedic surgeon, found normal alignment of the lumbar spine without spasm or tenderness to palpation, and normal neurologic findings in the lower extremities. He diagnosed low back pain.

In a report dated May 1, 2019, Dr. Stephane Lavoie, a Board-certified orthopedic surgeon, reviewed a lumbar magnetic resonance imaging (MRI) scan, which demonstrated disc degeneration at L4-5 and L5-S1 with mild left lateral recess stenosis at L4-5 and a small left extraforaminal protrusion. He diagnosed lumbar spondylosis, lumbar intervertebral disc degeneration, and lumbosacral spondylosis with radiculopathy.

On May 20, 2019, OWCP referred appellant, along with the medical record, a statement of accepted facts (SOAF), and a series of questions, to Dr. Brian C. Leung, a Board-certified orthopedic surgeon, for a second opinion examination regarding the status of appellant's accepted conditions.

In reports dated June 7 and July 12, 2019, Dr. Reppy diagnosed a popliteal cyst of the left knee and noted that appellant was considering undergoing left knee surgery.

A July 17, 2019 electromyogram and nerve conduction velocity (EMG/NCV) study of the upper extremities revealed bilateral carpal tunnel syndrome and possible bilateral T1 radiculopathy.

Thereafter, OWCP received a July 5, 2019 report, wherein Dr. Leung reviewed the medical record and SOAF. On examination of the spine and extremities, Dr. Leung found significant limitation of lumbar motion, positive impingement signs in the right shoulder, and tenderness to palpation of the right radiocarpal joint. He opined that the accepted right hip contusion had resolved, and that the right wrist sprain remained active based on tenderness to palpation of the right radiocarpal joint and MRI scan and x-ray findings consistent with scapholunate ligament tear and widening of the scapholunate interval. Dr. Leung also opined that the aggravation of lumbar disc disorder with myelopathy at L4-5 and L5-S1, and aggravation of chronic right rotator cuff tear, had returned to baseline, as "[t]ypically, [three] months off work with rest is enough time for an acute injury or exacerbation to resolve. Therefore, he returned to baseline on" May 3, 2019. Dr. Leung found that all accepted conditions except the right wrist sprain had attained maximum medical improvement (MMI). He found appellant able to perform full-time light-duty work with limitations.

In an August 16, 2019 report, Dr. Reppy opined that appellant sustained right carpal tunnel syndrome as revealed by the July 17, 2019 EMG/NCV study.

By notice dated September 24, 2019, OWCP advised appellant that it proposed to terminate his medical benefits for the accepted right hip contusion, aggravation of complete right rotator cuff tear, and aggravation of intervertebral disc disorders with myelopathy, lumbar region, based on Dr. Leung's opinion that the accepted employment-related conditions had ceased without residuals.

or disability. It afforded him 30 days to submit additional evidence or argument challenging the proposed termination.

In a November 1, 2019 report, Dr. Reppy diagnosed bilateral carpal tunnel syndrome, bilateral T1 radiculopathy, intervertebral disc disorder with myelopathy, herniated L4-5 and L5-S1 discs, complete rotator cuff tear of the right shoulder, full-thickness tear of the supraspinatus tendon of the right shoulder, and a popliteal cyst of the left knee. He disagreed with Dr. Leung's opinion that the accepted aggravation of lumbar disc disorder with myelopathy at L4-5 and L5-S1 had returned to baseline as Dr. Leung failed to provide preinjury lumbar range of motion measurements to establish that the condition had returned to baseline. Dr. Reppy opined that a functional capacity evaluation (FCE) was necessary to determine if appellant's lumbar condition had returned to baseline.

By decision dated November 13, 2019, OWCP terminated appellant's medical benefits for right hip contusion, aggravation of intervertebral disc disorder with myelopathy at L4 -5, L5-S1, and aggravation of chronic right rotator cuff tear, effective that date, as he no longer had residuals of these conditions causally related to his accepted September 24, 2018 employment injury. It advised him that his case remained open for unspecified sprain of right wrist.

On December 9, 2019, appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In a report dated January 24, 2020, Dr. Reppy related that a January 17, 2020 MRI scan of the lumbar spine demonstrated severe L3-4 neuroforaminal stenosis and a torn annulus at L5-S1. He noted that a January 9, 2020 FCE demonstrated significantly limited cervical and lumbar range of motion, and diminished lifting, pinch, and grip strength.

A hearing was held on April 9, 2020.

By decision dated May 27, 2020, OWCP's hearing representative affirmed the November 13, 2019 decision.

OWCP subsequently received additional reports dated June 19, 2020 through April 23, 2021, wherein Dr. Reppy recounted appellant's continued bilateral lumbar radiculopathy, right carpal tunnel syndrome, and limited motion of the right shoulder, right wrist, and lumbar spine.

OWCP also received a February 23, 2021 report from Dr. Tifani Gleeson, Board-certified in occupational medicine, in consultation with the employing establishment. Dr. Gleeson recommend a second opinion examination to determine appellant's work capacity.

An August 12, 2020 EMG/NCV study of the bilateral upper extremities revealed bilateral carpal tunnel syndrome, and possible left C8 and bilateral T1 nerve root entrapments.

An April 26, 2021 MRI scan of the cervical spine demonstrated reversal of the upper cervical lordosis, disc herniations at C2-3, C3-4, C4-5, and C5-6, slight posterolisthesis of C6 on C7, and posterior fossa arachnoid cyst producing mass effect on the cerebellum.

An April 26, 2021 MRI scan of the lumbar spine demonstrated lumbar levoscoliosis, a cyst, loss of L4-5 disc height and hydration, an L4-5 disc bulge effacing the ventral epidural fat impressing on the thecal sac, posterolateral L4-5 disc bulge with facet arthropathy narrowing the left neural foramen, right-sided L4-5 posterolateral disc herniation with annular tear producing moderate right neuroforaminal stenosis, loss of L5-S1 disc height and hydration with a broad-based disc herniation and annular tear effacing the central epidural fat and narrowing the left lateral recess and left neural foramen, and L5-S1 facet arthropathy narrowing the bilateral neural foramen.

An April 26, 2021 MRI scan of the right shoulder demonstrated degenerative acromioclavicular joint changes with effusion, synovial cyst, a chronic, full-thickness, retracted tear of the supraspinatus tendon with atrophy of the supraspinatus muscle and synovial cyst, fluid collection in the subcoracoid bursa, and a chronic-appearing full-thickness tear and retraction of the infraspinatus tendon with atrophy of the infraspinatus muscle.

On May 5, 2021, OWCP referred appellant, along with the medical record, a SOAF, and a series of questions, to Dr. Leung for an updated second opinion examination. It requested that he determine whether the accepted right wrist condition had resolved, and whether there was a need for further treatment.

On May 27, 2021, appellant, through counsel, requested reconsideration.

By decision dated June 23, 2021, OWCP summarily denied appellant's request for reconsideration of the merits of his claim. Appellant, through counsel, filed an appeal with the Board.

In a June 18, 2021 report, Dr. Reppy noted that appellant had developed occipital headaches.

In a July 16, 2021 report, Dr. Leung noted his review of the medical record and SOAF. On examination of the right upper extremity, he found positive Durkin's and Tinel's signs, and limited wrist motion. Dr. Leung obtained x-rays of the right wrist, which revealed widening of the scapholunate interval. He diagnosed right carpal tunnel syndrome and a right wrist sprain causally related to the accepted September 24, 2018 employment injury. Dr. Leung opined that appellant required additional treatment for right carpal tunnel syndrome. He returned appellant to full-time light-duty work with permanent restrictions limiting lifting, pulling, and pushing to 20 pounds.

OWCP received reports dated July 28 through September 17, 2021 wherein Dr. Reppy diagnosed impingement syndrome of the right shoulder, cervical degenerative disc disease, cervical radiculopathy, full-thickness tear of the supraspinatus tendon of the right shoulder, and L5-S1 disc herniation.

On October 27, 2021, OWCP expanded the acceptance of appellant's claim to include carpal tunnel syndrome of the right wrist.

OWCP subsequently received reports dated November 5, 2021 through August 5, 2022 wherein Dr. Reppy diagnosed acromioclavicular joint arthrosis and pseudo-articulation changes about the greater tuberosity of the head of the left humerus suggestive of an older separation. In his August 5, 2022 report, Dr. Reppy noted that appellant underwent total left knee arthroplasty.

By order dated June 9, 2022, the Board set aside OWCP's June 23, 2021 decision and remanded the case for consideration of appellant's argument on reconsideration and the additional evidence submitted, to be followed by issuance of an appropriate decision.

By *de novo* decision dated September 12, 2022, OWCP denied modification of the May 27, 2020 decision.

Thereafter, OWCP received additional reports dated September 9, 2022 through August 25, 2023, wherein Dr. Reppy recounted appellant's symptoms of bilateral lumbar radiculopathy, right wrist and shoulder pain, and pain and paresthesias of the right hand and wrist. On examination, he found swelling of the right wrist, bilaterally diminished grip strength, tenderness to palpation of both knees, mild edema of the right knee and ankle, and restricted motion of the cervical and lumbar spine and the bilateral shoulders.

On September 12, 2023, appellant, through counsel, requested reconsideration.

Thereafter, OWCP received reports dated September 15 through November 10, 2023 wherein Dr. Reppy recounted that appellant continued to experience neck and lumbar pain with radicular symptoms.

October 11, 2023 EMG/NCV studies of the upper extremities revealed moderate bilateral carpal tunnel syndrome, possible left ulnar entrapment neuropathy at the elbow, and possible T1 radiculopathy. A thoracic outlet syndrome evaluation of even date revealed no evidence of thoracic outlet syndrome.

An October 11, 2023 soft tissue ultrasound study of the neck revealed mild-to-moderate inflammation of the bilateral C6-7 area with paravertebral muscle spasm.

By decision dated November 30, 2023, OWCP denied modification of the September 19, 2022 decision.

OWCP subsequently received reports dated December 15, 2023 through June 28, 2024, wherein Dr. Reppy recounted appellant's continued neck pain, lumbar pain with bilateral radicular symptoms, bilateral shoulder pain, bilateral wrist pain, right hand pain with progressive numbness and paresthesias, right fourth and fifth trigger fingers, and right knee pain. He indicated that appellant underwent right knee surgery on January 18, 2024.

On August 12, 2024, OWCP referred appellant to Dr. Omar Hussamy, a Board-certified orthopedic surgeon, for a second opinion examination regarding the status of appellant's accepted right wrist conditions. It provided him with a SOAF and requested that he determine if appellant had active residuals of right carpal tunnel syndrome and right wrist sprain.

Thereafter, OWCP received July 26 and August 30, 2024 reports wherein Dr. Reppy reiterated prior findings, and diagnoses.

In a September 6, 2024 report, Dr. Hussamy noted his review of the medical record and SOAF. On examination, he found limited range of motion of the right wrist, decreased right grip strength, decreased sensation in the radially enervated digits of the right hand, and positive Tinel's

and Phalen's signs at the right wrist. Dr. Hussamy diagnosed a right wrist sprain and right carpal tunnel syndrome causally related to the accepted September 24, 2018 employment injury. He found appellant totally disabled from work.

In reports dated September 27 through October 14, 2024, Dr. Reppy diagnosed pseudo-articular changes at the left humeral head indicative of an old separation. He found appellant's condition was otherwise unchanged.

On December 2, 2024, appellant, through counsel, requested reconsideration.

By decision dated December 13, 2024, OWCP denied modification.

### **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>6</sup> After it has determined that, an employee has disability causally related to his or her federal employment, it may not terminate compensation without establishing that the disability has ceased, or that it is no longer related to the employment.<sup>7</sup> OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>8</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.<sup>9</sup> 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.<sup>10</sup>

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.<sup>11</sup> This is called an impartial medical examination and OWCP will

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<sup>6</sup> *S.M.*, Docket No. 23-0067 (issued June 11, 2025); *S.F.*, Docket No. 24-0304 (issued July 10, 2024); *R.G.*, Docket No. 22-0165 (issued August 11, 2022); *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>7</sup> See *S.M.*, *id.*; *S.F.*, *id.*; *R.L.*, Docket No. 22-1175 (issued May 11, 2023); *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>8</sup> *R.L.*, *id.*; *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

<sup>9</sup> *A.B.*, Docket No. 25-0504 (issued June 20, 2025); *F.B.*, Docket No. 25-0332 (issued April 24, 2025); *E.J.*, Docket No. 20-0013 (issued November 19, 2020); *L.W.*, Docket No. 18-1372 (issued February 27, 2019).

<sup>10</sup> *F.B.*, *id.*; *M.E.*, Docket No. 20-0877 (issued August 17, 2021); *L.S.*, Docket No. 19-0959 (issued September 24, 2019); *R.P.*, Docket No. 18-0900 (issued February 5, 2019).

<sup>11</sup> 5 U.S.C. § 8123(a); see *R.S.*, Docket No. 10-1704 (issued May 13, 2011); *S.T.*, Docket No. 08-1675 (issued May 4, 2009).

select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.<sup>12</sup> When OWCP has referred the case to an IME 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.<sup>13</sup>

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

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's entitlement to medical benefits for right hip contusion, aggravation of intervertebral disc disorder with myelopathy at L4-5, L5-S1, and aggravation of chronic right rotator cuff tear, effective November 13, 2019.

OWCP referred appellant to Dr. Leung for a second opinion evaluation to determine the status of his accepted conditions. In his July 5, 2019 report, Dr. Leung opined that the accepted right hip contusion had resolved, and that the aggravations of L4-5 and L5-S1 disc disorder with myelopathy and chronic right rotator cuff tear had returned to baseline, as appellant had been off work for three months, which "was enough time for an acute injury or exacerbation to resolve."

Dr. Reppy, in a November 1, 2019 report, diagnosed a complete right rotator cuff tear with full-thickness supraspinatus tear, intervertebral disc disorder with myelopathy, and herniated L4-5 and L5-S1 discs. He asserted that Dr. Leung had not supported his opinion that the accepted lumbar disc disorder had returned to baseline as he had not compared appellant's post-injury condition to preinjury range-of-motion measurements.

It is well established that, when there are opposing medical reports of virtually equal weight and rationale, the case should be referred to an IME for the purpose of resolving the conflict.<sup>14</sup> The Board finds that the medical reports of Dr. Reppy and Dr. Leung were in conflict on the issue of whether appellant had residuals of his accepted conditions. OWCP was, therefore, required to refer appellant to an IME, pursuant to 5 U.S.C. § 8123(a), to resolve the conflict prior to its termination of his wage-loss compensation and medical benefits.

As the medical evidence of record is insufficient to justify the termination medical benefits with regard to appellant's right hip contusion, aggravation of intervertebral disc disorder with myelopathy at L4-5, L5-S1, and aggravation of chronic right rotator cuff tear, the Board finds that OWCP failed to meet its burden of proof.

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<sup>12</sup> 20 C.F.R. § 10.321.

<sup>13</sup> *S.S.*, Docket No. 19-0766 (issued December 13, 2019); *W.M.*, Docket No. 18-0957 (issued October 15, 2018); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

<sup>14</sup> *L.M.*, Docket No. 25-0230 (issued March 24, 2025); *M.F.*, Docket No. 24-0932 (issued December 19, 2024); *A.N.*, Docket No. 24-0531 (issued September 4, 2024); *S.S.*, Docket No. 24-0773 (issued September 16, 2024); *A.E.*, Docket No. 23-0756 (issued December 14, 2023); *D.P.*, Docket No. 21-0534 (issued December 2, 2021); *N.A.*, Docket No. 21-0542 (issued November 8, 2021); *G.B.*, Docket No. 16-0996 (issued September 14, 2016); *James P. Roberts*, 31 ECAB 1010 (1980).



### **CONCLUSION**

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's entitlement to medical benefits for right hip contusion, aggravation of intervertebral disc disorder with myelopathy at L4-5, L5-S1, and aggravation of chronic right rotator cuff tear, effective November 13, 2019.<sup>15</sup>

### **ORDER**

**IT IS HEREBY ORDERED THAT** the December 13, 2024 decision of the Office of Workers' Compensation Programs is reversed.

Issued: August 7, 2025  
Washington, DC

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

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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<sup>15</sup> In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.