

² The Board notes that, following the October 28, 2024 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.*

FACTUAL HISTORY

This case has previously been before the Board on a different issue.³ 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 October 20, 2021 appellant, then a 41-year-old health aid and technician, filed a traumatic injury claim (Form CA-1) alleging that on October 7, 2021 she sustained an allergic reaction to the COVID-19 vaccination she received while in the performance of duty. She stopped work on the date of injury. OWCP accepted the claim for adverse effect of viral vaccine. It paid appellant wage-loss compensation on the supplemental rolls, effective November 22, 2021, and on the periodic rolls, effective September 10, 2023.

On January 25, 2024 appellant was hospitalized as she was experiencing choking, wheezing, and hives. Dr. Htin Thaung, an internist, diagnosed anaphylactic reaction of unknown cause and related that she responded by epinephrine injection, methyl prednisone injection, and famotidine. He provided an EpiPen on discharge.

In a March 20, 2024 report, Dr. John S. Townsend, IV, a family practitioner, described the October 7, 2021 employment incident and accepted employment injuries. He related appellant's medical treatment history and performed a physical examination. Dr. Townsend diagnosed history of adverse reaction to vaccine, history of recurrent anaphylaxis-type reaction of undetermined etiology, psychogenic dyspnea, idiopathic urticaria with angioedema, and history of laryngospasm. He recommended a trial of management with the Vecttor therapy system modalities and neuropsychological and psychiatric evaluations.

On March 27, 2024 OWCP referred appellant, along with a statement of accepted facts (SOAF), a copy of the case record, and a series of questions, to Dr. Pedro T. Zevallos, a Board-certified internist specializing in pulmonary disease, for a second opinion examination and evaluation regarding the status of her employment-related conditions.

In an April 15, 2024 report, Dr. Zevallos related appellant's symptoms of hoarseness and multiple anaphylactic reactions beginning with the October 7, 2021 COVID-19 vaccination. He reviewed the SOAF and medical records including the finding of paradoxical vocal cord fold movement. Dr. Zevallos performed a physical examination and diagnosed anaphylactic reaction to COVID-19 vaccination, chronic persistent hoarseness, the etiology of which had never been ascertained, repeated attacks of sudden upper airway closure and shortness of breath which were probably related to vocal cord dysfunction, and laryngospasms and thyroid nodules. He opined that appellant's physical examination was unremarkable and that the objective findings did not correspond to her subjective complaints. Dr. Zevallos noted that anaphylactic reactions were limited in duration and that once the reaction passed there were no clinical consequences. He determined, therefore, that appellant's current hoarseness was unrelated to the initial anaphylactic reaction and that the anaphylactic reaction she experienced from the COVID-19 vaccination was of limited duration and without any lingering consequences. Dr. Zevallos concluded that appellant could return to her date-of-injury position with no work restrictions due to the accepted employment injury. On April 22, 2024 he completed a work capacity evaluation (Form OWCP-

³ *Order Remanding Case*, Docket No. 24-0667 (issued November 26, 2024).

5c) and found that appellant was capable of performing her usual job without restrictions, that she could perform medium strength level work, and required no activity limitations.

In a May 6, 2024 letter, OWCP requested that Dr. Townsend respond to the findings of Dr. Zevallos' April 2024 reports. Dr. Townsend did not respond.

On June 27, 2024 Dr. Vartika Atrey, a Board-certified family practitioner, completed an attending physician's report (Form CA-20), in which she diagnosed fibromyalgia, arthralgia, idiopathic anaphylaxis, adverse reaction to COVID vaccine, and chronic headache. She concluded that, "All symptoms began with administration of COVID vaccine." Dr. Atrey opined that appellant was totally disabled.

On August 23, 2024 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits because her accepted October 7, 2021 employment injury had resolved. It found that the weight of medical evidence rested with the April 2024 medical reports of Dr. Zevallos, OWCP's second opinion physician, who found that she no longer had disability or residuals causally related to her accepted October 7, 2021 employment injury. OWCP afforded appellant 30 days to submit additional evidence or argument. No response was received.

By decision dated October 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. Zevallos, the second opinion physician, who had determined in his April 2014 reports that she no longer had disability or residuals causally related to the accepted October 7, 2021 employment injury.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify modification or termination 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

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁷ To terminate authorization for medical treatment, OWCP must

⁴ *S.G.*, Docket No. 23-0652 (issued October 11, 2023); *B.M.*, Docket No. 21-1150 (issued April 5, 2022); *R.H.*, Docket No. 19-1064 (issued October 9, 2020); *M.M.*, Docket No. 17-1264 (issued December 4, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁵ *S.G.*, *id.*; *B.M.*, *id.*; *A.T.*, Docket No. 20-0334 (issued October 8, 2020); *E.B.*, Docket No. 18-1060 (issued November 1, 2018).

⁶ *C.R.*, Docket No. 19-1132 (issued October 1, 2020); *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).

⁷ *S.G.*, *supra* note 4; *E.J.*, Docket No. 20-0013 (issued November 19, 2020); *L.W.*, Docket No. 18-1372 (issued February 27, 2019).

establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.⁸

ANALYSIS

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective October 28, 2024, as she no longer had disability or residuals causally related to her accepted October 7, 2021 employment injury.

In his April 15, 2024 report, Dr. Zevallos, OWCP's referral physician, discussed appellant's history of injury and medical course of treatment. He reported the findings of his physical examination and related that her subjective complaints were not supported by objective physical examination findings. In support of this conclusion, Dr. Zevallos observed that appellant's subjective complaints were inconsistent with her diagnosis of anaphylactic reaction which was a diagnosis of limited duration without any lingering consequences. He found that she had no medical residuals of her accepted October 7, 2021 employment injury and required no further medical treatment. Dr. Zevallos repeated his conclusion that appellant could return to her date-of-injury position in his April 22, 2014 report.

The Board has reviewed the opinions of Dr. Zevallos and finds that they have reliability, probative value, and convincing quality with respect to their conclusions regarding the issue of termination. Dr. Zevallos provided a thorough factual and medical history and accurately summarized the relevant medical evidence. He provided medical rationale for his opinion by explaining that appellant's accepted conditions had resolved, and no further medical treatment was required for the accepted October 7, 2021 employment injury.⁹ Accordingly, OWCP properly relied on Dr. Zevallos' second-opinion report in terminating appellant's wage-loss compensation and medical benefits.¹⁰

Prior to OWCP's finalization of the proposed termination, appellant submitted a Form CA-20 report from Dr. Atrey, who diagnosed fibromyalgia, arthralgia, idiopathic anaphylaxis, adverse reaction to COVID vaccine, and chronic headache. She concluded that these several diagnoses "began with administration of COVID vaccine" and that she was disabled for work. However, Dr. Atrey did not provide medical rationale explaining the nexus between appellant's current diagnoses and their relationship to the accepted October 7, 2021 employment injury, and/or as to how/why she continued to be disabled from the effects of the employment injury. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how an employment activity could have caused or aggravated a

⁸ *S.G., id.*; *A.J.*, Docket No. 18-1230 (issued June 8, 2020); *R.P.*, Docket No. 18-0900 (issued February 5, 2019).

⁹ *See C.W.*, Docket No. 21-0943 (issued February 17, 2023); *W.C.*, Docket No. 18-1386 (issued January 22, 2019); *D.W.*, Docket No. 18-0123 (issued October 4, 2018); *Melvina Jackson*, 38 ECAB 443 (1987).

¹⁰ *See P.B.*, Docket No. 21-0894 (issued February 8, 2023); *E.S.*, Docket No. 20-0673 (issued January 11, 2021); *K.W.*, Docket No. 19-1224 (issued November 15, 2019); *N.G.*, Docket No. 18-1340 (issued March 6, 2019); *A.F.*, Docket No. 16-0393 (issued June 24, 2016).

medical condition.¹¹ As such, this report is insufficient to overcome the weight of the medical opinion evidence accorded to Dr. Zevallos, or to create a conflict in medical opinion.¹²

The Board, therefore, finds that OWCP properly terminated appellant's wage-loss compensation and medical benefits, effective October 28, 2024.

CONCLUSION

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective October 28, 2024, as she no longer had disability or residuals causally related to her accepted October 7, 2021 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the October 28, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 13, 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

¹¹ See *A.B.*, Docket No. 25-0057 (issued November 26, 2024); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

¹² *D.L.*, Docket No. 22-0161 (issued March 10, 2023).