

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

## **ISSUES**

The issues are: (1) whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective November 21, 2024, as he no longer had disability or residuals causally related to his accepted July 3, 2011 employment injury; and (2) whether appellant has met his burden of proof to establish continuing disability and/or residuals, on or after November 21, 2024, causally related to the accepted July 3, 2011 employment injury.

## **FACTUAL HISTORY**

On July 6, 2011 appellant, then a 33-year-old correctional officer, filed a traumatic injury claim (Form CA-1) alleging that on July 3, 2011 he injured his left hip when he moved inmate property while in the performance of duty. He noted that he felt pressure and throbbing pain in his previously replaced artificial left hip as a result. Appellant stopped work from July 4 through August 17, 2011, and again on November 20, 2011. OWCP accepted the claim for sprain of left hip and thigh. It paid appellant wage-loss compensation on the supplemental rolls, effective November 20, 2011, and on the periodic rolls, effective May 6, 2012.<sup>3</sup>

On April 11, 2024 OWCP referred appellant, along with the medical record, a statement of accepted facts (SOAF), and a series of questions, to Dr. Michael Einbund, a Board-certified orthopedic surgeon, for a second opinion examination.

In a report dated June 13, 2024, Dr. Einbund reviewed the SOAF and medical record, and noted appellant's history of left hip surgery at age 16, followed by a left hip replacement surgery in August 2010. He indicated that he had not received medical treatment for the accepted July 3, 2011 employment injury for the past seven years other than periodic chiropractic adjustments to alleviate pain in the lower back and hips. Dr. Einbund performed a physical examination and observed a normal gait, significant tenderness, restricted active range of motion (ROM) in both hips, and a positive Patrick's test in the left hip. He also obtained circumferential measurements of the lower extremities and noted no difference between the right and left calves or thighs and a one-centimeter deficit above the left knee, compared to the right. Dr. Einbund opined that there were no residuals of the accepted left hip and thigh sprains at the time of his June 13, 2024 examination. He explained that any abnormal examination findings were due to the significant prior left hip condition, surgeries, and post-surgical degenerative changes. Dr. Einbund noted that the October 28, 2011 computerized tomography (CT) scan did not reveal any acute findings. He indicated that appellant was not in need of any further treatment or work restrictions as it related to the July 3, 2011 employment injury.

On July 25, 2024 OWCP requested that Dr. Einbund provide a supplemental opinion, addressing whether the accepted employment injury accelerated or aggravated appellant's preexisting left hip conditions.

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<sup>3</sup> In a letter dated September 5, 2013, the Office of Personnel Management (OPM) approved appellant's application for disability retirement.

In a supplemental report dated August 27, 2024, Dr. Einbund indicated that appellant's complaints of left hip pain were to be expected based upon his significant prior pathology and history of multiple surgeries in the left hip prior to the July 3, 2011 employment injury. He noted that there was limited ROM in both hips and no acute finding on the October 28, 2011 CT scan. Dr. Einbund opined that there was "no material change which has occurred to give rise for an aggravation of the underlying condition or acceleration."

On October 11, 2024 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits because his accepted July 3, 2011 employment injury had resolved. It found that the weight of the medical evidence rested with the June 13 and August 27, 2024 second opinion evaluation reports of Dr. Einbund, who found that appellant no longer had disability or residuals causally related to his accepted July 3, 2011 employment injury. OWCP afforded appellant 30 days to submit additional evidence or argument. No further evidence was received.

By decision dated November 21, 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. Einbund, who had determined in his June 14 and August 27, 2024 reports that appellant no longer had disability or residuals causally related to the accepted July 3, 2011 employment injury.

On March 20, 2025 appellant was evaluated by Dr. Glenna Tolbert, a Board-certified physiatrist.

On April 9, 2025 appellant, through counsel, requested reconsideration of OWCP's November 21, 2024 decision. In support thereof, appellant submitted a narrative medical report by Dr. Tolbert dated March 25, 2025, indicating that she reviewed OWCP's November 21, 2024 termination decision, reports of Dr. Rama T. Pathi, a Board-certified orthopedic surgeon, dated February 25 through December 9, 2015, the October 28, 2011 CT scan, and the June 13 and August 27, 2024 second opinion evaluation reports by Dr. Einbund. Dr. Tolbert performed a physical examination and observed pain and restricted ROM in both hips and a limited gait, which she attributed to discomfort and an overweight body habitus. She indicated that appellant sustained a significant sprain of the fibro-osseous junction in the left hip, which was especially susceptible to injury and poor healing due to reduced blood supply, and which was already compromised due to his prior hip arthroplasty. Dr. Tolbert diagnosed chronic left hip sprain, characterized by persistent pain and reduced joint stability, which directly impacted appellant's ability to bear weight and perform activities of daily living. She opined that appellant had not recovered from the July 3, 2011 employment injury, that he had ongoing objective physical examination findings and restrictions, and that he was in need of additional medical treatment.

By decision dated April 24, 2025, OWCP denied modification of the November 21, 2024 decision.

### **LEGAL PRECEDENT -- ISSUE 1**

The United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty. Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's

benefits.<sup>4</sup> Having determined that an employee has a disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.<sup>5</sup> Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>6</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.<sup>7</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>8</sup>

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

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective November 21, 2024, as he no longer had disability or residuals causally related to his accepted July 3, 2011 employment injury.

In his June 13 and August 27, 2024 reports, Dr. Einbund, OWCP's second opinion physician, noted his review of the SOAF and appellant's medical records. He discussed his examination findings and diagnosed left hip and thigh sprains, causally related to the accepted July 3, 2011 employment injury. Dr. Einbund opined that there were no residuals of the accepted employment injury at the time of his June 13, 2024 examination. He explained that any abnormal examination findings were due to the significant prior left hip condition, surgeries, and postsurgical degenerative changes. Dr. Einbund noted that the October 28, 2011 CT scan did not reveal any acute findings and opined that there was "no material change which has occurred to give rise for an aggravation of the underlying condition or acceleration."

Dr. Einbund based his opinion on a proper factual and medical history and detailed findings on examination.<sup>9</sup> He further provided a well-rationalized opinion that appellant's left hip and thigh sprains had resolved, explaining that findings on examination and objective studies were

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<sup>4</sup> See *D.W.*, Docket No. 20-0885 (issued June 11, 2021); *M.M.*, Docket No. 17-1264 (issued December 3, 2018); *M.L.*, Docket No. 13-0442 (issued September 3, 2013).

<sup>5</sup> *J.D.*, Docket No. 18-0958 (issued January 8, 2019); *I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

<sup>6</sup> See *D.P.*, Docket No. 18-0038 (issued January 4, 2019); *J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

<sup>7</sup> *H.P.*, Docket No. 18-0851 (issued December 11, 2018); *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

<sup>8</sup> *J.B.*, Docket No. 17-2021 (issued August 8, 2018); *Kathryn E. Demarsh, id.*; *James F. Weikel*, 54 ECAB 660 (2003).

<sup>9</sup> See *M.R.*, Docket No. 23-1052 (issued March 5, 2024); *S.V.*, Docket No. 23-0474 (issued August 1, 2023); *J.S.*, Docket No. 20-1409 (issued September 1, 2021).

attributable to his preexisting left hip replacement and not to his employment-related condition.<sup>10</sup> As Dr. Einbund's second opinion reports represent the weight of the medical evidence in establishing that appellant's accepted left hip sprain had resolved, the Board finds that OWCP met its burden of proof.

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

Once OWCP properly terminates a claimant's compensation benefits, the burden shifts to appellant to establish continuing disability or residuals after that date causally related to the accepted injury.<sup>11</sup> To establish causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background, supporting such causal relationship.<sup>12</sup>

Section 8123(a) provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.<sup>13</sup> The implementing regulation states that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an OWCP medical adviser, OWCP shall appoint a third physician to make an examination. This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.<sup>14</sup> For a conflict to arise, the opposing physicians' viewpoints must be of virtually equal weight and rationale.<sup>15</sup> In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical examiner (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>16</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that this case is not in posture for decision.

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<sup>10</sup> *J.P.*, Docket No. 23-0075 (issued March 26, 2023); *J.S.*, *id.*

<sup>11</sup> *S.G.*, Docket No. 23-0652 (issued October 11, 2023); *V.W.*, Docket No. 20-0693 (issued June 2, 2021); *D.G.*, Docket No. 19-1259 (issued January 29, 2020); *S.M.*, Docket No. 18-0673 (issued January 25, 2019); *J.R.*, Docket No. 17-1352 (issued August 13, 2018); *Manuel Gill*, 52 ECAB 282 (2001).

<sup>12</sup> *Id.*

<sup>13</sup> 5 U.S.C. § 8123(a).

<sup>14</sup> 20 C.F.R. § 10.321.

<sup>15</sup> *H.B.*, Docket No. 19-0926 (issued September 10, 2020); *C.H.*, Docket No. 18-1065 (issued November 29, 2018); *Darlene R. Kennedy*, 57 ECAB 414, 416 (2006); *James P. Roberts*, 31 ECAB 1010 (1980).

<sup>16</sup> See *J.P.*, Docket No. 23-0075 (issued March 26, 2023); *C.M.*, Docket No. 20-1647 (issued October 5, 2021); *James P. Roberts*, *id.*

As discussed above, the weight of the medical evidence at the time of the termination rested with Dr. Einbund, who concluded that appellant no longer had residuals or disability causally related to the accepted July 3, 2011 employment injury. Appellant subsequently submitted a March 25, 2025 report, wherein Dr. Tolbert noted objective physical examination findings and diagnosed a chronic left hip sprain. She opined that appellant had objective physical examination findings, ongoing restrictions, and required additional medical treatment as it related to the July 3, 2011 accepted employment injury. Dr. Tolbert explained that he sustained a significant sprain of the fibro-osseous junction in the left hip, which was especially susceptible to injury and poor healing due to reduced blood supply, and which was already compromised due to his prior hip arthroplasty.

As noted above, if there is a disagreement between an employee's physician and an OWCP referral physician, OWCP will appoint an IME who shall make an examination.<sup>17</sup> The Board finds a conflict in medical opinion evidence between Drs. Einbund and Tolbert, with respect to whether appellant continues to have any disability or residuals, on or after November 21, 2024, causally related to the accepted July 3, 2011 employment injury.<sup>18</sup>

The Board shall, therefore, remand the case for OWCP to refer appellant to an IME for resolution of the conflict in medical opinion evidence in accordance with 5 U.S.C. § 8123(a).<sup>19</sup> After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

### **CONCLUSION**

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective November 21, 2024, as he no longer had disability or residuals causally related to his accepted July 3, 2011 employment injury. The Board further finds that this case is not in posture for decision with regard to whether he has established continuing disability and/or residuals, on or after November 21, 2024, causally related to the accepted July 3, 2011 employment injury.

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<sup>17</sup> *Supra* note 1; *see R.R.*, Docket No. 25-0090 (issued January 31, 2025); *E.B.*, Docket No. 23-0169 (issued August 24, 2023); *S.S.*, Docket No. 19-1658 (issued November 12, 2020); *C.S.*, Docket No. 19-0731 (issued August 22, 2019).

<sup>18</sup> *D.W.*, Docket No. 24-0157 (issued March 26, 2024); *S.T.*, Docket No. 21-0906 (issued September 2, 2022); *S.M.*, Docket No. 19-0397 (issued August 7, 2019).

<sup>19</sup> *M.T.*, Docket No. 25-0305 (issued May 7, 2025); *Y.M.*, Docket No. 23-0091 (issued August 4, 2023); *V.B.*, Docket No. 19-1745 (issued February 25, 2021).

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 24, 2025 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: July 23, 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