

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

S.M., Appellant

and

**U.S. POSTAL SERVICE, LENOX HILL SOUTH
POST OFFICE, New York, NY, Employer**

)
)
)
) **Docket No. 23-0067**
) **Issued: June 11, 2025**
)
)

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 18, 2022 appellant filed a timely appeal from a September 19, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective September 19, 2022, because she no longer had disability or residuals causally related to her accepted March 3, 2009 employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the September 19, 2022 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.*

FACTUAL HISTORY

On March 9, 2009 appellant, then a 41-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on March 3, 2009 she sustained injuries to her neck, arms, hands, back, hips, and legs due to a motor vehicle accident in the performance of duty.³ She stopped work that day. On April 30, 2009 OWCP accepted the claim for cervical radiculopathy and lumbar radiculopathy. It paid appellant wage-loss compensation on the supplemental rolls commencing April 18, 2009, and on the periodic rolls commencing February 14, 2010.

In a January 20, 2022 progress report, appellant's treating physician Dr. Andrew Tarleton, a Board-certified orthopedic surgeon, reviewed appellant's physical examination and diagnostic testing findings, including x-rays and a December 15, 2021 magnetic resonance imaging (MRI) scan of the cervical spine. He provided an assessment of cervical herniated disc, cervical spinal stenosis, cervical radiculopathy, herniated intervertebral disc of lumbar spine, herniated thoracic disc without myelopathy, lumbar radiculopathy, sacroiliitis, lumbar degenerative disc disease, and lumbar paraspinal muscle spasm. Dr. Tarleton opined that appellant was totally disabled because of her work-related injury. Based on the results of the December 15, 2021 cervical spine MRI scan, he recommended an anterior cervical discectomy and fusion (ACDF) at C5-C7.

On January 21, 2022 OWCP referred appellant, together with a statement of accepted facts (SOAF), the medical record, and a series of questions, for a second opinion evaluation with Dr. Sean Lager, a Board-certified orthopedic surgeon, to determine whether the accepted conditions had resolved.

In a February 21, 2022 report, Dr. Lager reviewed appellant's history of injury and the medical record. He reported that appellant's subjective complaints corresponded to the objective findings and that she had decreased range of motion and strength on examination. Dr. Lager opined that appellant's work-related conditions were cervical and lumbar strains which had resolved, noting that there was no evidence to support that the work-related conditions were still active and causing objective findings 13 years later. He indicated that appellant had reached maximum medical improvement, additional medical recovery was not expected, and there was no need for further medical treatment including surgery, physical therapy, injections or durable medical equipment. Based on appellant's clinical presentation, Dr. Lager opined that appellant was able to return to her date-of-injury position as a letter carrier without restrictions.

On March 4, 2022 OWCP received a copy of appellant's December 15, 2021 cervical spine MRI scan report. The December 15, 2021 cervical spine MRI scan findings included: straightening of lordosis with diffuse loss of disc signal and height; arthrosis with capsular thickening at C1-C2; broad bulge, Luschka hypertrophy and facet arthrosis with mild-to-moderate left foraminal stenosis at C2-C3; broad bulge impressing on the thecal sac and Luschka hypertrophy and facet arthrosis with moderate left foraminal stenosis at C3-C4; broad bulge and

³ Appellant has had other work-related injuries. Under OWCP File No. xxxxxx994, OWCP accepted that appellant sustained contusions of the face, head, left hip, thigh, and knee, and neck and low back sprains due to a February 17, 2007 work-related motor vehicle accident. Under OWCP File No. xxxxxx220, OWCP denied appellant's claim for a May 23, 2007 traumatic injury due to working a limited-duty position which exceeded her weight restrictions. Under OWCP File No. xxxxxx284, OWCP denied appellant's traumatic injury claim for injuries sustained in a January 2, 2008 work-related motor vehicle accident. It has not administratively combined these claims.

spondylotic ridge impressing on the thecal sac and Luschka hypertrophy and facet arthrosis with moderate left foraminal stenosis and mild right foraminal stenosis at C4-C5; broad bulge, spondylotic ridge, asymmetric to left herniation impressing on the thecal sac with contact of the cord and central stenosis and Luschka hypertrophy and facet arthrosis with mild left foraminal stenosis at C5-C6; and broad bulge, spondylotic ridge, broad herniation asymmetric to right impressing on the thecal sac and cord with central stenosis, and Luschka hypertrophy and facet arthrosis with mild foraminal stenosis at C6-C7, and diffuse low signal of the marrow.

On March 21, 2022 OWCP issued a notice of proposed termination of appellant's wage-loss compensation and medical benefits. It found that Dr. Lager's second opinion represented the weight of the medical evidence and established that appellant had no further injury-related conditions or disability and there was no need for further treatment, including surgery. OWCP advised appellant that she had 30 days to submit additional evidence.

On May 11, 2022 OWCP declared a conflict in the medical opinion evidence between the treating physician Dr. Tarleton, and second opinion physician Dr. Lager, as to whether the accepted conditions had resolved.

In an April 15, 2022 report, Dr. Tarleton provided an assessment of herniated cervical disc, chronic cervical radiculopathy, lumbar disc disease, lumbar disc herniation, and lumbar radiculopathy. He continued to opine that appellant was totally disabled due to her work-related conditions.

On May 23, 2022 OWCP referred appellant, along with the medical record, a SOAF, and a list of questions, to Dr. Behnam Salari, an osteopath Board-certified in orthopedic surgery, for an impartial medical examination to resolve the conflict in medical evidence.

In June 27 and August 8, 2022 reports, Dr. Tarleton reviewed appellant's December 15, 2021 MRI scan reports of the cervical and lumbar spine and noted examination findings. He diagnosed cervical radiculopathy, lumbar disc herniation, and lumbar radiculopathy. Dr. Tarleton continued to opine that appellant was totally disabled due to her work-related conditions.

In a July 21, 2022 report, Dr. Salari noted appellant's history of injury and his review of her medical record. He opined that appellant's work-related conditions of lumbar radiculopathy and cervical radiculopathy had resolved as there were no objective findings of radiculopathy and subjective complaints of cervical and lumbar discomfort did not support a diagnosis of either lumbar radiculopathy or cervical radiculopathy. From a cervical and lumbar standpoint, Dr. Salari opined that appellant was able to return to her date-of-injury position with restrictions based on underlying medical condition and obese body habitus which were not causally related to the work injury. He further opined that appellant had ongoing degenerative changes as documented by the cervical spine MRI scan reports. Dr. Salari also opined that appellant had cervical and lumbar strains superimposed on preexisting degenerative changes. He explained that the degenerative changes were at maximum medical improvement 13 years after the date of loss. Dr. Salari explained that the change in diagnostic studies were causally related to ongoing degeneration, noting that she had prior motor vehicle collisions and work-related injury and that it was more probable that these findings were degenerative in nature due to age. He also completed a work capacity evaluation (Form OWCP-5c).

By decision dated September 19, 2022, OWCP terminated appellant's wage-loss compensation and medical benefits, effective that date, finding that she no longer had disability or residuals causally related to her accepted March 3, 2009 employment injury. It accorded the special weight of the evidence to the opinion of Dr. Salari as the impartial medical examiner (IME).

LEGAL PRECEDENT

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, it may not terminate compensation without establishing that the disability has ceased, or that it is no longer related to the employment.⁵ OWCP's 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 compensation.⁷ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁸

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.⁹ For a conflict to arise the opposing physicians' viewpoints must be of virtually equal weight and rationale.¹⁰ When OWCP has referred the case to an IME for the purpose of resolving the conflict,

⁴ *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).

⁵ *See 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).

⁶ *R.L., id.*; *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁷ *See A.M.*, Docket No. 22-0300 (issued April 10, 2023); *A.G.*, Docket No. 19-0220 (issued August 1, 2019); *A.P.*, Docket No. 08-1822 (issued August 5, 2009); *Kathryn E. Demarsh*, 56 ECAB 677 (2005); *Furman G. Peake*, 41 ECAB 361 (1990).

⁸ *See A.G., id.*; *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002).

⁹ 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).

¹⁰ *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).

the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.¹¹

ANALYSIS

The Board finds that OWCP improperly terminated appellant's wage-loss compensation and medical benefits, effective September 19, 2022.

OWCP determined that a conflict in medical opinion existed between Dr. Tarleton, appellant's treating physician, and Dr. Lager, an OWCP referral physician, regarding whether the accepted conditions had resolved. It referred her to Dr. Salari, pursuant to 5 U.S.C. § 8123(a), for an impartial medical examination. OWCP terminated appellant's wage-loss compensation and medical benefits based on Dr. Salari's opinion that the work-related medical conditions had resolved.

At the time of the referral, the Board finds that there was no true conflict as Dr. Lager's opinion was of diminished probative value, as he did not rely on the SOAF as a framework in reaching his conclusions. OWCP's procedures dictate that when a DMA, second opinion specialist, or IME renders a medical opinion based on a SOAF which is incomplete or inaccurate, or does not use the SOAF as the framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether.¹² Dr. Lager noted that appellant's work-related conditions were cervical and lumbar strains. However, OWCP accepted cervical and lumbar radiculopathy as work related, not cervical and lumbar strains. Thus, the Board, finds that his report is of diminished probative value and insufficient to create a conflict in medical opinion with Dr. Tarleton.¹³ As there is no conflict in medical evidence pursuant to 5 U.S.C. § 8123(a), the referral to Dr. Salari constitutes a second opinion examination.¹⁴ Accordingly, Dr. Salari's opinion is insufficient to carry the special weight of an IME and should instead be considered for its own intrinsic value.¹⁵

In a July 21, 2022 report, Dr. Salari opined that appellant's work-related conditions of lumbar radiculopathy and cervical radiculopathy had resolved as there were no objective findings

¹¹ *K.D.*, Docket No. 19-0281 (issued June 30, 2020); *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); *James P. Roberts*, 31 ECAB 1010 (1980).

¹² Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3 (October 1990); *see also D.C.*, Docket No. 21-0780 (issued December 22, 2021); *R.W.*, Docket No. 19-1109 (issued January 2, 2020); *Paul King*, 54 ECAB 356 (2003).

¹³ *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).

¹⁴ *R.L.*, Docket No. 20-1611 (issued September 30, 2022); *see S.M.*, Docket No. 19-0397 (issued August 7, 2019) (the Board found that at the time of the referral for an impartial medical examination there was no conflict in medical opinion evidence; therefore, the referral was for a second opinion examination); *see also Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996) (the Board found that, as there was no conflict in medical opinion evidence, the report of the physician designated as the IME was not afforded the special weight of the evidence but was considered for its own intrinsic value as he was a second opinion specialist).

¹⁵ *R.L.*, *id.*; *Cleopatra McDougal-Saddler*, *id.*; *F.R.*, Docket No. 17-1711 (issued September 6, 2018).

of radiculopathy, and subjective complaints of cervical and lumbar discomfort did not support a diagnosis of either lumbar radiculopathy or cervical radiculopathy. From a cervical and lumbar standpoint, he opined that appellant was able to return to her date-of-injury position with restrictions based on an underlying medical condition and obese body habitus which were not causally related to the work injury. The Board finds that the July 21, 2022 report from Dr. Salari lacked rationale as to why he concluded that the accepted employment conditions had resolved.¹⁶ As such, his report is of diminished probative value and is insufficient to terminate appellant's compensation benefits. The Board thus finds that OWCP failed to meet its burden of proof.

CONCLUSION

The Board finds that OWCP improperly terminated appellant's wage-loss compensation and medical benefits, effective September 19, 2022.

ORDER

IT IS HEREBY ORDERED THAT the September 19, 2022 decision of Office of Workers' Compensation Programs is reversed.

Issued: June 11, 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

¹⁶ See *C.B. (S.B.)*, Docket No. 19-1629 (issued April 7, 2020); *Deborah T. Lyon*, Docket No. 05-116 (issued December 9, 2005).