

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

E.B., Appellant)	
)
)
and)	Docket No. 24-0780
)	Issued: June 5, 2025
U.S. POSTAL SERVICE, PLAINFIELD POST OFFICE, Plainfield, NJ, Employer)	
)
)

Appearances:

James D. Muirhead, 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 July 22, 2024 appellant, through counsel, filed a timely appeal from an April 3, 2024 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 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 3, 2024 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.*

ISSUES

The issues are: (1) whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective October 26, 2023, as she no longer had disability or residuals causally related to her accepted December 29, 2021 employment injury; and (2) whether appellant has met her burden of proof to establish continuing disability or residuals on or after October 26, 2023, causally related to her accepted December 29, 2021 employment injury.

FACTUAL HISTORY

On January 5, 2022 appellant, then a 50-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 29, 2021 she sustained injuries to the left side of her neck, shoulder, and back when she was involved in a motor vehicle accident (MVA) while in the performance of duty. She stopped work on December 30, 2021.

On May 5, 2022 OWCP accepted the claim for sprain of ligaments of the cervical spine and other sprain of left shoulder joint. It paid appellant wage-loss compensation on the supplemental rolls commencing February 13, 2022.

Appellant returned to part-time light-duty work, four hours per day, on February 1, 2023. OWCP continued to compensate her for partial wage loss through September 30, 2023.

In a February 28, 2022 report, Dr. David Weiss, an osteopath Board-certified in orthopedic surgery and appellant's treating physician, diagnosed additional conditions of herniated nucleus pulposus C3-4, C4-5, C6-7, bulging disc C5-6; aggravation of preexisting quiescent cervical spine osteoarthritis; left upper extremity radiculitis; herniated nucleus pulposus L4-5, L5-S1; aggravation of preexisting quiescent lumbar spine osteoarthritis; and left rotator cuff tendinopathy.

In a letter dated May 5, 2022, OWCP requested that Dr. Weiss provide an opinion as to whether the additional conditions were causally related to the accepted employment injury.

In an August 5, 2022 response, Dr. Weiss related that on the date of injury, appellant was sitting in her mail truck, seat belted, when a pickup truck backed up and struck the front of her vehicle. He noted that she sought immediate medical attention for her cervical spine and left shoulder at an urgent care facility. Dr. Weiss also noted that appellant had no preexisting, past medical history of injuries to those areas. He related that when he last saw her on July 11, 2022, she continued to complain of pain to the cervical spine and left shoulder. Dr. Weiss noted that he examined appellant and found muscle spasm, tenderness, and sensory deficits in the left and right upper extremities, motor strength deficit in both upper extremities, and decreased range of motion (ROM). He noted that an April 4, 2022 electromyography (EMG) scan of the upper extremities revealed left C5 and C7 radiculopathy; results from an EMG of the lower extremities were pending; February 7 and March 7, 2022 magnetic resonance imaging (MRI) scans of the cervical and lumbar spine and the left shoulder demonstrated herniated discs at C3-4, C4-5, C6-7, and L4-5; and an MRI scan of the left shoulder on March 7, 2022 demonstrated a partial rotator cuff tear of the infraspinatus muscle. Dr. Weiss opined that the December 29, 2021 work-related MVA led to these injuries because appellant tried to brace herself upon impact, which caused her body to jolt back and forth and caused the injuries to the herniated discs in the cervical and lumbar spine and left shoulder. He further opined that she was unable to perform the date-of-injury position as

a letter carrier which required repetitive lifting/carrying of mail/packages and prolonged standing/walking.

In a report dated January 25, 2023, Dr. Weiss diagnosed post-traumatic cervical strain and sprain, herniated nucleus pulposus at C3-7, bulging disc at C5-6, aggravation of preexisting quiescent cervical spine osteoarthritis, left C5 and C7 radiculopathy, herniated nucleus pulposus at L4-S1, aggravation of preexisting quiescent lumbar spine osteoarthritis, left partial rotator cuff tear of the infraspinatus, left shoulder subacromial bursitis, and lumbar radiculitis. He recommended physical therapy.

On February 8, 2023 OWCP referred appellant, a statement of accepted facts (SOAF), the case record, and a series of questions, to Dr. William M. Sayde, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine the nature and extent of appellant's accepted conditions, appropriate treatment recommendations, and work restrictions.

In a March 6, 2023 report, Dr. Sayde recounted appellant's history of injury and medical treatment. He examined her and provided physical examination findings. Dr. Sayde opined that the accepted conditions of sprain of ligaments of the cervical spine and other sprain of left shoulder joint had resolved and there was no objective evidence supporting any continuing residuals of those conditions. He further opined that no further medical treatment was warranted, appellant had no continuing disability, and could return to full duty, eight hours per day, without restrictions. Dr. Sayde also noted that her left shoulder abnormalities and cervical disc changes were degenerative in nature and not caused by the employment injury.

On March 29, 2023 OWCP issued a notice of proposed termination of appellant's wage-loss compensation and medical benefits based on the second opinion report of Dr. Sayde. It afforded her 30 days to submit additional evidence or argument challenging the proposed termination.

In an April 3, 2023 report, Dr. Faheem A. Abbasi, Board-certified in physical medicine and rehabilitation, noted pain in appellant's left shoulder; cervicalgia (neck pain); myalgia, unspecified site; and radiculopathy, cervical region. He opined that appellant's left shoulder tear and cervical disc herniations were not degenerative in nature, were caused by the work injury on December 29, 2021, and prevented appellant from performing full duty at work. Dr. Abbasi recommended physical therapy and an orthopedic surgical consultation.

In an April 10, 2023 report, Dr. Alexandra Carrer, a Board-certified orthopedic surgeon, diagnosed incomplete rotator cuff tear or rupture of the left shoulder, and impingement syndrome of the left shoulder. She opined that the conditions were work related and recommended a left shoulder arthroscopy.

In letters dated April 24, and 25, 2023, counsel for appellant argued that Dr. Sayde did not review the MRI scans which revealed herniated discs and a partial tear in the rotator cuff. Counsel noted that appellant had no prior injuries to the shoulder, neck, or back, and was not receiving any treatment for those areas. He further noted that after the work injury, she experienced severe symptoms in her neck, back, and shoulder. Counsel also argued that even if appellant had degenerative disease, the work injury caused an aggravation, that Dr. Sayde did not review the

report of Dr. Abassi and the diagnostic reports, and that there was a conflict in the medical opinions.

On May 24, 2023 OWCP found a conflict in medical opinion between Dr. Abassi and Dr. Sayde regarding whether appellant continued to have residuals from the accepted employment injury.

On June 6, 2023 OWCP referred appellant, the medical record, the SOAF, and a series of questions to Dr. Howard Pecker, a Board-certified orthopedic surgeon, for an impartial medical examination to resolve the conflict in the medical opinion evidence. It requested that he provide all diagnoses found on examination and address whether they were causally related to the December 29, 2021 employment injury; whether the employment injury aggravated an underlying/preexisting condition; and whether the work-related conditions had resolved.

In a July 11, 2023 report, Dr. Pecker, serving as the impartial medical examiner (IME), related appellant's history of injury and medical treatment. He examined her and noted that her current complaints included pain in her left arm, shoulder, lower back, and neck, and numbness and tingling in her fingers on the left side and down into her right foot and leg. Dr. Pecker noted that the original diagnostic films were not available for review; however, he was able to review the reports of the studies. He opined that based upon appellant's history, physical examination, and review of documentation, her sprain of the left shoulder and sprain of the cervical spine were resolved. Dr. Pecker also related that appellant's chronic and preexisting degenerative disc disease of the cervical spine and mild senescent changes and tendinopathy of the left shoulder were supported by objective findings. He explained that there was nothing to contraindicate that the initial sprain or strain of the left shoulder and cervical spine was causally related to the work injury, but that appellant's multilevel disc changes were chronic, preexisting, commonly found in patients of her age, and showed no evidence of traumatic origin. Dr. Pecker noted that partial rotator cuff tear was common in an examinee of appellant's age and there was no evidence of traumatic origin secondary to the MVA and no mechanism of injury to cause this finding. He explained that the work injury was superimposed on previous degenerative changes in both the neck and shoulder and that sprains and strains superimposed on degenerative changes in the neck and shoulder resolved within 12 weeks, the condition was temporary, appellant had returned to preinjury status, and the aggravation had ceased. Dr. Pecker found no evidence of permanency or worsening of the underlying preexisting conditions secondary to the work injury. He opined that appellant's prognosis was excellent, that there was no need for further treatment, and that there were no neurologic changes in the extremities or deficits of the shoulder secondary to the work injury. Dr. Pecker provided a 50-pound lifting restriction, but explained this was not the result of the work injury and was the result of chronic and preexisting degenerative changes in the cervical spine and mild degenerative tendinosis of the left shoulder as noted on the MRI scan report. He also noted that appellant's reports of pain were unreliable as evidenced by multiple Waddell signs during the examination and that the evidence included normal motor and sensory testing in the previous notes and intermittent 5/5 strength during his examination which was consistent with resolution of the accepted conditions of cervical sprain and left shoulder sprain.

In a September 7, 2023 report, Dr. Abbasi diagnosed pain in the left shoulder; cervicalgia; myalgia, unspecified site; and radiculopathy, cervical region.

On September 19, 2023 OWCP issued a notice of proposed termination of appellant's wage-loss compensation and medical benefits based on the impartial medical report of Dr. Pecker, to which it afforded special weight. It afforded her 30 days to submit additional evidence or argument challenging the proposed termination.

In a September 11, 2023 report, Dr. Weiss diagnosed post-traumatic cervical strain and sprain, herniated nucleus pulposus C3-4, C4-5, and C6-7, bulging disc at C5-6, aggravation of preexisting quiescent cervical spine osteoarthritis, left C5 and C7 radiculopathy, EMG/NCV positive, herniated nucleus pulposus L4-5, LS-S1, aggravation of preexisting quiescent lumbar spine osteoarthritis, left partial rotator cuff tear of the infraspinatus, MRI scan positive on March 7, 2022, left shoulder subacromial bursitis, bilateral L5 radiculopathy, EMG/NCV positive on May 25, 2022, and status post-cervical epidural block and right shoulder injection. He noted that appellant was awaiting shoulder surgery.

In September 7 and October 5, 2023 reports, Dr. Abbasi repeated his previous findings.

In a letter dated October 4, 2023, counsel for appellant objected to the special weight accorded to Dr. Pecker, noted that appellant had no prior symptoms, and disagreed with Dr. Pecker's opinion that the partial rotator cuff tear was age related.

By decision dated October 26, 2023, OWCP terminated appellant's wage-loss compensation and medical benefits, effective that date, finding that the medical evidence of record established that she no longer had any residuals related to her accepted work-related medical conditions or continued disability from work as a result of the December 29, 2021 employment injury. It accorded the special weight of the medical evidence to the opinion of the IME, Dr. Pecker.

On November 2, 2023 counsel for appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which was held on February 15, 2024.

In a November 2, 2023 report, Dr. Abbasi repeated his findings.

In a report dated November 4, 2023, Dr. Weiss repeated his previous findings and diagnoses. He related that appellant denied any cervical or lumbar pain or left shoulder condition prior to the work-related MVA on December 29, 2021, and explained that while appellant had preexisting quiescent degenerative arthritis of the cervical and lumbar spine, she did not have symptoms until the injury on December 29, 2021. Dr. Weiss also noted that she had preexisting quiescent arthritic changes in the left shoulder area, but was asymptomatic until the work-related injury of December 29, 2021, and the MRI scan showed a rotator cuff tear which he opined was caused by the work injury. He noted that MRI scans of the cervical and lumbar spine revealed herniated discs and appellant had positive EMG/NCV studies of both the upper and lower extremities which he also opined were directly related to the work injury. Dr. Weiss noted that he disagreed with Dr. Pecker's opinion that appellant's cervical spine and left shoulder sprains were resolved and explained that she had positive MRI scan findings and positive EMG/NCV studies which revealed herniated discs with active radiculopathy.

By decision dated April 3, 2024, OWCP's hearing representative affirmed the October 26, 2023 decision. She found that Dr. Pecker's report was entitled to special weight and established

that appellant's work-related strains had resolved and that her current conditions were not causally related to the December 29, 2021 employment injury.

LEGAL PRECEDENT -- ISSUE 1

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, 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.⁷ 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.⁸

Section 8123(a) of FECA 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.⁹ When there are opposing reports of virtually equal weight and rationale, the case must be referred to an IME, pursuant to section 8123(a) of FECA, to resolve the conflict in the medical evidence.¹⁰ Where a case is referred to an IME for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.¹¹

⁴ *C.F.*, Docket No. 21-0003 (issued January 21, 2022); *J.T.*, Docket No. 19-1723 (issued August 24, 2020); *S.P.*, Docket No. 19-0196 (issued June 24, 2020); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁵ *S.P.*, Docket No. 22-0393 (issued August 26, 2022); *A.T.*, Docket No. 20-0334 (issued October 8, 2020); *E.B.*, Docket No. 18-1060 (issued November 1, 2018).

⁶ *S.P.*, *id.*; *C.R.*, Docket No. 19-1132 (issued October 1, 2020); *G.H.*, Docket No. 18-0414 (issued November 14, 2018).

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

⁸ 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).

⁹ 5 U.S.C. § 8123(a). See *J.J.*, Docket No. 23-0440 (issued December 21, 2023); see *M.E.*, Docket No. 21-0281 (issued June 10, 2022); *R.C.*, Docket No. 18-0463 (issued February 7, 2020); see also *G.B.*, Docket No. 16-0996 (issued September 14, 2016).

¹⁰ See *M.E.*, *id.*; *M.R.*, Docket No. 19-0526 (issued July 24, 2019); *C.R.*, Docket No. 18-1285 (issued February 12, 2019).

¹¹ *M.E.*, *id.*; *P.B.*, Docket No. 20-0984 (issued November 25, 2020); *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001); *James P. Roberts*, 31 ECAB 1010 (1980).

ANALYSIS -- ISSUE 1

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective October 26, 2023, as she no longer had disability or residuals causally related to her accepted December 29, 2021 employment injury.

OWCP properly found a conflict in medical opinion between the treating physicians, Dr. Weiss, Dr. Abbasi, and Dr. Carrer, and the second opinion physician, Dr. Sayde, as to whether appellant's work-related conditions had resolved. Accordingly, OWCP properly referred appellant to Dr. Pecker for an impartial medical examination, pursuant to 5 U.S.C. § 8123(a).

In a July 11, 2023 report, Dr. Pecker discussed appellant's history of injury and provided physical examination findings. He explained that appellant's accepted cervical spine and left shoulder joint sprains from the employment injury was superimposed on previous degenerative changes in both the neck and shoulder. Dr. Pecker concluded that appellant's sprains had resolved within 12 weeks, the conditions were temporary, and that appellant had returned to preinjury status. He also found no evidence that appellant's underlying preexisting conditions had worsened secondary to the work injury. Dr. Pecker explained that appellant's partial rotator cuff tear was common in individuals of appellant's age and there was no evidence of traumatic origin secondary to the accepted injury. He opined that appellant's prognosis was excellent, and that she had no need for further treatment, secondary to the work injury. While Dr. Pecker indicated that appellant had a 50-pound lifting restriction, he explained this was due to chronic and preexisting degenerative changes in the cervical spine and mild degenerative tendinosis of the left shoulder, and was not due to appellant's accepted sprains. He provided a well-rationalized opinion that appellant had no further disability or residuals causally related to her accepted employment injury, explaining that findings on examination and objective studies demonstrated no continued employment-related condition causing disability or requiring further medical treatment.¹² The Board therefore finds that Dr. Pecker's opinion, as the IME, is accorded the special weight of the medical evidence. Accordingly, OWCP met its burden of proof to terminate appellant's compensation benefits, effective October 26, 2023.

LEGAL PRECEDENT -- ISSUE 2

When OWCP properly terminates appellant's wage-loss compensation and medical benefits, the burden of proof shifts to her to establish continuing disability or residuals, on or after that date, causally related to the accepted employment injury.¹³

¹² *M.R.*, Docket No. 23-1052 (issued March 5, 2024); *Id.*

¹³ See *L.K.*, Docket No. 20-0443 (issued August 8, 2023); *C.C.*, Docket No. 19-1062 (issued February 6, 2020).

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.¹⁴

ANALYSIS -- ISSUE 2

The Board finds that appellant did not meet her burden of proof to establish continuing disability or residuals after October 26, 2023, causally related to her accepted December 29, 2021 employment injury.

The medical evidence appellant submitted subsequent to the termination decision was insufficient to overcome the special weight accorded Dr. Pecker as an IME regarding whether she had continuing disability and residuals of her accepted conditions. OWCP received additional reports from appellant's treating physicians, Dr. Weiss and Dr. Abbasi, essentially reiterating findings and conclusion that she continued to be disabled from the employment injury. The Board has long held that reports from a physician who was on one side of a medical conflict that an IME resolved, are generally insufficient to overcome the weight accorded to the report of the IME or to create a new conflict.¹⁵ The reports from Dr. Weiss and Dr. Abbasi, therefore, are insufficient to overcome the special weight accorded to Dr. Pecker's opinion, or to create a new conflict in medical opinion regarding continuing disability or residuals on or after October 26, 2023.¹⁶

As the medical evidence of record is insufficient to establish continuing disability and/or residuals, on or after October 26, 2023, causally related to appellant's accepted December 29, 2021 employment injury, the Board finds that she has not met her burden of proof.¹⁷

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective October 26, 2023, as she no longer had disability or residuals causally related to her accepted December 29, 2021 employment injury. The Board further finds that appellant has not met her burden of proof to establish continuing employment-related disability or residuals on or after October 26, 2023, causally related to her accepted employment injury.

¹⁴ *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).

¹⁵ *E.H.*, Docket No. 19-1352 (issued December 18, 2019); *I.J.*, 59 ECAB 408 (2008).

¹⁶ See *P.T.*, Docket No. 22-0841 (issued January 26, 2023); *N.U.*, Docket No. 20-1022 (issued January 25, 2022).

¹⁷ *C.L.*, Docket No. 23-0012 (issued April 26, 2024); *P.H.*, Docket No. 21-1072 (issued May 18, 2022); *R.C.*, Docket No. 19-0376 (issued July 15, 2019).

ORDER

IT IS HEREBY ORDERED THAT the April 3, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 5, 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