

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

pushed mail on a belt, causing his left wrist to hit a metal plate. OWCP accepted the claim for left wrist sprain, left ganglion cyst, and left-hand synovitis and tenosynovitis. It paid appellant wage-loss compensation on the supplemental rolls effective August 1, 2015 and on the periodic rolls effective December 10, 2017.

On April 17, 2019 OWCP issued a notice proposing to terminate appellant's wage-loss compensation as the medical evidence established that he was no longer disabled due to his accepted employment injury.

By decision dated May 21, 2019, OWCP terminated appellant's wage-loss compensation, effective that date, finding the medical evidence of record established that he no longer had disability causally related to the accepted June 17, 2015 employment injury. It noted that appellant's medical benefits were not terminated. Appellant thereafter submitted additional evidence.

By decision dated June 22, 2020, OWCP denied modification of the May 21, 2019 termination decision.

In April 10, 2024 reports, Dr. Theodore Jeen Sung, a Board-certified emergency room physician, diagnosed left forearm pain, left wrist joint pain, left wrist tendinitis, ganglion cyst, and left radial tunnel syndrome. He indicated that appellant could work with restrictions, which were permanent. The restrictions included no more than 30 minutes of repetitive left-hand motion, and a 5-pound left upper extremity lifting limit.

On May 1, 2024 the employing establishment offered appellant a modified mail processing clerk position, which appellant refused. By letter dated May 9, 2024, OWCP advised him that he had been offered a position as a modified mail processing clerk, which it found was suitable because it was within the medical restrictions provided by appellant's treating physician. Appellant was advised that he had 30 days to accept the position or provide a written explanation of why he refused the offer. OWCP further advised that pursuant to 5 U.S.C. § 8106(c)(2) his entitlement to wage-loss and schedule award benefits would be terminated if it determined that he had refused an offer of suitable work.

On May 20, 2024 OWCP referred appellant, along with a statement of accepted facts (SOAF), the case record, and a series of questions, to Dr. Michael Einbund, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine whether he had residuals and disability due to the accepted employment-related condition.

In a report dated June 25, 2024, Dr. Einbund recounted appellant's history of injury and reviewed the medical evidence of record. He related that appellant's physical examination revealed tenderness over the left wrist dorsum, left forearm dorsum, and medial aspect of left forearm on the ulnar border, negative left wrist Phalen test and Tinel's sign, and full range of motion. Dr. Einbund opined that appellant no longer had any residuals or disability due to the accepted June 17, 2015 employment injury based on the lack of any objective findings. He found appellant could perform his date-of-injury job with no restrictions.

By decision dated August 21, 2024, OWCP terminated appellant's entitlement to wage-loss compensation and medical benefits, effective that date, based on Dr. Einbund's opinion that he no longer had any disability or residuals due to his accepted June 17, 2015 employment injury.

### **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.<sup>2</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>3</sup> OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>4</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.<sup>5</sup> 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.<sup>6</sup>

### **ANALYSIS**

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's entitlement to wage-loss compensation and medical benefits, effective August 21, 2024.

Pursuant to OWCP's procedures, before terminating appellant's entitlement to wage-loss compensation and medical benefits, the claims examiner is responsible for advising him of the proposed termination or reduction, the reasons for the proposed action, and of an opportunity to respond in writing.<sup>7</sup> Pretermination notices are required in cases where all medical benefits are being terminated based on the medical opinion of a referee or second opinion physician.<sup>8</sup> The

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<sup>2</sup> See *H.S.*, Docket No. 24-0211 (issued April 5, 2024); *D.G.*, Docket No. 19-1259 (issued January 29, 2020); *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

<sup>3</sup> See *H.S.*, *id.*; *D.B.*, Docket No. 17-1335 (issued January 5, 2018); *Elaine Sneed*, 56 ECAB 373 (2005); *Patricia A. Keller*, 45 ECAB 278 (1993); 20 C.F.R. § 10.503.

<sup>4</sup> *H.S.*, *id.*; *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).

<sup>5</sup> *A.G.*, Docket No. 19-0220 (issued August 1, 2019); *A.P.*, Docket No. 08-1822 (issued August 5, 2009); *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

<sup>6</sup> See *A.G.*, *id.*; *James F. Weikel*, 54 ECAB 660 (2003).

<sup>7</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.4(b) (February 2013); see also *Winton A. Miller*, 52 ECAB 405 (2001).

<sup>8</sup> *Id.* at Chapter 2.1400.4(b)(2); see also *J.S.*, Docket No. 17-0937 (issued December 14, 2017).

Board has held that OWCP must follow its procedures and provide notice and opportunity to respond prior to the termination of compensation benefits.<sup>9</sup>

The Board finds that when OWCP terminated appellant's entitlement to wage-loss compensation and medical benefits based on Dr. Einbund's report, it had not issued a pretermination notice. Thus, the termination must be reversed.

**CONCLUSION**

The Board finds that OWCP failed to meet its burden of proof to terminate medical benefits, effective August 21, 2024.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 21, 2024 decision of the Office of Workers' Compensation Programs is reversed.

Issued: June 24, 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

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<sup>9</sup> S.S., Docket No. 19-1091 (issued December 3, 2019).