

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

<p>J.W., Appellant</p> <p>and</p> <p>U.S. POSTAL SERVICE, WARD PLACE STATION, Washington DC, Employer</p>	<p>))))))</p>	
		Docket No. 25-0549
		Issued: June 25, 2025

Appearances:

Alan J. Shapiro, Esq., for the appellant¹
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 May 13, 2025 appellant, through counsel, filed a timely appeal from a May 1, 2025² merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.⁴

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 Counsel did not request review of the March 25, 2025 decision. Thus, that decision is not currently before the Board on this appeal. *See* 20 C.F.R. § 501.3.

³ 5 U.S.C. § 8101 *et seq.*

⁴ The Board notes that, following the May 1, 2025 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.*

ISSUES

The issues are: (1) whether OWCP has met its burden of proof to terminate appellant's entitlement to wage-loss compensation and medical benefits, effective October 25, 2024, as she no longer had disability or residuals causally related to her accepted May 4, 2000 employment injury; and (2) whether appellant has met her burden of proof to establish continuing disability or residuals, on or after October 25, 2024, causally related to the accepted May 4, 2000 employment injury.

FACTUAL HISTORY

On May 5, 2000 appellant, then a 45-year-old clerk filed a traumatic injury claim (Form CA-1) alleging that on May 4, 2000 she sustained left knee and ankle injuries when she slipped while in the performance of duty.⁵ She stopped work on May 5, 2000 and returned to her light-duty position eight hours a day on October 16, 2000. OWCP accepted the claim left knee contusion, left knee internal derangement, and left knee meniscal tear. It paid appellant wage-loss compensation on the supplemental rolls commencing September 30, 2008, and on periodic rolls commencing June 7, 2009.

In reports dated February 24 through November 25 2020, appellant's attending physician, Dr. Peter Trent, an orthopedic surgeon, diagnosed post-traumatic arthritis and found that appellant was totally disabled due to her August 31, 1987 employment injury under OWCP File No. xxxxxx292.

On December 31, 2020, appellant, through counsel, requested that the acceptance of her claim be expanded to include the additional conditions of left knee osteoarthritis, post-traumatic arthritis of the ankles, and lumbar spondylosis.

On March 4, 2021, OWCP referred appellant to Dr. Rafael Lopez, a Board-certified orthopedic surgeon, for a second opinion examination. It provided him with a statement of accepted facts (SOAF) and requested that he determine whether there were any additional employment-related medical conditions, and the extent of any employment-related disability.

In a March 10, 2021 report, Dr. Trent related that appellant was experiencing bilateral knee pain.

On May 4, 2021, Dr. Lopez provided findings on physical examination and reviewed the SOAF. He opined that the accepted conditions of internal derangement of the left knee, left knee meniscal tear, ankle sprain, and sprain of the lumbosacral joint had resolved. Dr. Lopez determined that there were no other related conditions or diagnoses including post-traumatic

⁵ OWCP assigned the present claim OWCP File No. xxxxxx652. Appellant had previously filed a Form CA-1 for an August 31, 1987 traumatic injury claim, in OWCP File No. xxxxxx292, which OWCP accepted for lumbar strain, and left ankle strain. Appellant filed a Form CA-1 for a January 10, 2002 traumatic injury accepted by OWCP for lumbar strain and lumbar disc disorder assigned OWCP File No. xxxxxx566. She subsequently filed a Form CA-1 for a March 11, 2006 traumatic injury claim in OWCP File No. xxxxxx238 which OWCP denied. Appellant filed a Form CA-1 for a July 17, 2008 traumatic injury which OWCP accepted for ankle sprain in OWCP File No. xxxxxx755. On February 3, 2023, OWCP administratively combined OWCP File Nos. xxxxxx292, xxxxxx566, xxxxxx238, xxxxxx755, and xxxxxx652 with the latter serving as the master file.

arthritis. He concluded that no additional medical treatment was necessary, and that appellant could return to her date-of-injury position without restrictions.

In a May 26, 2021 note, Dr. Trent provided physical findings including pain in the back and pain and swelling in both ankles.

On June 3, 2021, OWCP requested a supplemental report from Dr. Lopez providing medical reasoning for his conclusions.

In a June 4, 2021 addendum, Dr. Lopez opined that there were no ongoing diagnoses causally related to the work injury. He found that the accepted left knee conditions had resolved as demonstrated by the May 23, 2001 magnetic resonance imaging (MRI) scan which revealed postoperative changes without retear. Dr. Lopez further found that the diagnosed ankle and back sprains had resolved as sprains healed within days or weeks and the injury occurred over 20 years previous. He found no electrodiagnostic evidence of displacement of the lumbar disc in the January 25, 2002 MRI scan.

On August 12, 2021, OWCP found a conflict in the medical evidence between Dr. Lopez and Dr. Trent with regard to whether appellant had continuing employment-related disability and medical residuals. It referred appellant, along with the case record, and a series of questions to Dr. Frederick Moore, a Board-certified orthopedic surgeon, for an impartial medical evaluation to resolve the conflict in medical opinion.

In an August 23, 2021 report, Dr. Trent opined that appellant continued to experience residuals of her low back and bilateral ankle conditions. He determined that the employment-related conditions had not resolved. Dr. Trent diagnosed lumbar spondylosis, left knee osteoarthritis, and lumbar pain.

On October 1, 2021, Dr. Moore, the impartial medical examiner (IME), conducted a physical examination and reviewed appellant's medical history and SOAF. He set forth findings of significant valgus deformity in the right knee and back pain with motion. Dr. Moore noted mild pes planus bilaterally and normal hindfoot valgus. He diagnosed bilateral ankle sprains, aggravation of bilateral ankle arthritis, aggravation of lumbar spondylosis, aggravation of left knee osteoarthritis, and aggravation of lumbar sprain and intervertebral disc displacement. Dr. Moore opined that appellant's accepted employment injury of May 4, 2000 temporarily aggravated the diagnosed conditions and that her diagnosed conditions had returned to preinjury status. He determined that no further treatment was indicated and that she was capable of returning to her date-of-injury position. Dr. Moore explained that the May 4, 2000 lifting episode was an aggravation of her conditions, and that lumbar sprain and bilateral ankle sprains had a clinical course of resolution of six weeks. He completed a work restriction evaluation (Form OWCP-5c) and found that appellant could perform her regular duties at medium strength level and no lifting, pushing, or pulling greater than 20 pounds.

In a January 19, 2022 report, Dr. Trent reviewed x-rays and found significant progression of post-traumatic degenerative joint disease of the left knee. On March 16, 2022, he completed an attending physician's report (Form CA-20) diagnosing arthritis of the back, knee, and bilateral ankles as a result of the August 31, 1987 employment injuries. Dr. Trent opined that the injuries caused arthritis to develop and indicated by checking a box marked "Yes" that her diagnosed conditions were caused or aggravated by the employment activity. He further opined that appellant was totally disabled.

On April 21, 2022, OWCP proposed to terminate appellant's wage-loss compensation and medical benefits because her accepted May 4, 2000 employment injury had resolved. It found that the weight of medical evidence rested with the October 1, 2021 medical report of Dr. Moore, the IME, who found that she no longer had disability or residuals causally related to her accepted May 4, 2000 employment injury. OWCP afforded appellant 30 days to submit additional evidence or argument.

In a May 12, 2022 report, Dr. Trent continued to opine that appellant was totally disabled. On examination, he reported an unsteady gait favoring the left lower extremity, tenderness to palpation over L2-4 with moderate paravertebral muscle spasm, and moderate effusion, varus deformity of the left knee with medial joint tenderness, patellofemoral crepitation, and increased inversion/eversion arc of the left ankle. Dr. Trent examined x-rays and found mild degenerative changes in the left ankle, advanced degenerative changes of the medial patellofemoral compartments of the left knee, and advanced facet disease with acute degenerative levoscoliosis of the lumbar spine. He opined that appellant had developed advanced degenerative joint disease of the back and left knee and chronic instability of the left ankle such that she was totally disabled from work.

By decision dated June 29, 2022, 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. Moore, the IME, who had determined in his October 1, 2021 reports that she no longer had disability or residuals causally related to the accepted May 4, 2000 employment injury.

On July 11, 2022, appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on November 18, 2022.

In an August 1, 2022 report, Dr. Trent found that appellant had reached maximum medical improvement. He diagnosed spondylosis lumbar region and low back pain.

Dr. Avrum Patibanda, a Board-certified physiatrist, completed an August 15, 2022 report diagnosing lumbar radiculopathy and peripheral neuropathy. He reviewed electrodiagnostic studies and found evidence of a demyelinating peripheral polyneuropathy affecting the bilateral lower limbs.

On September 1, 2022, Dr. Trent diagnosed left knee osteoarthritis, lumbar spondylosis and chronic ankle pain. He also reviewed the August 15, 2022 electrodiagnostic studies.

By decision dated February 3, 2023, OWCP's hearing representative reversed the June 29, 2022 termination decision, finding that Dr. Moore's report was not based on a complete factual background and therefore insufficient to constitute the special weight of the medical opinion evidence.

On May 18, 2023 OWCP requested a supplemental opinion from Dr. Moore to resolve the existing conflict of medical opinion evidence.

In a July 28, 2023 supplemental report, Dr. Moore reviewed the SOAF and found that appellant had preexisting issues with her back and lower extremities prior to the May 4, 2000 employment injury. He noted his October 1, 2021 report and his previous findings that the May 4, 2000 employment injuries were temporary aggravation of her preexisting conditions. Dr. Moore

diagnosed bilateral ankle sprains, aggravation of bilateral ankle arthritis, aggravation of lumbar spondylosis, aggravation of left knee osteoarthritis, and aggravation of lumbar sprain and intervertebral disc displacement. He again opined that appellant had no documented residuals of the May 4, 2000 employment injury as those conditions resolved six weeks after injury. Dr. Moore found that appellant's continuing disability was not related to the May 4, 2000 employment injury and that these injuries did not require further medical treatment. He determined that appellant did not have any residuals of her prior left knee arthroscopies. Dr. Moore explained that the medical rationale was found in the physical findings on examination.

By decision dated September 1, 2023, OWCP terminated appellant's wage-loss compensation and medical benefits, effective that date. It found that the special weight of the medical evidence rested with Dr. Moore, the IME, who had determined in his October 1, 2021 and July 28, 2023 reports that she no longer had disability or residuals causally related to the accepted May 4, 2000 employment injury.

On September 11, 2023, appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on December 8, 2023.

In an August 31, 2023 report, Dr. Trent found that appellant's left knee medial compartment disease had progressed. On December 21, 2023, he opined that appellant's degenerative changes were posttraumatic in nature due to remote injuries. In a January 25, 2024 report, Dr. Trent opined that appellant was totally disabled from work and that her conditions were unchanged. On February 3, 2024, he noted that appellant had experienced work-related injuries to both ankles, her low back, and her left knee. Dr. Trent found that the injuries had progressed and that appellant currently experienced significant degenerative disease involving her knee, low back and both ankles which rendered her disabled from work.

By decision dated February 21, 2024, OWCP's hearing representative reversed the September 1, 2023 termination decision, finding that Dr. Moore was insufficiently rationalized to carry the weight of the medical evidence as the IME. She directed OWCP to refer appellant for a new impartial medical examination.

In a May 13, 2024 report, Dr. Trent repeated his findings and diagnoses of significant degenerative disease. In a separate treatment note of even date, he reviewed back x-rays which demonstrated significant degenerative changes at L3-4 and L4-5, but no evidence of spondylolisthesis. Appellant underwent physical therapy. On July 1, 2024, Dr. Trent found that she was experiencing an exacerbation of her underlying lumbar disease.

On July 3, 2024, OWCP found a conflict in the medical evidence between Dr. Lopez and Dr. Trent with regard to the nature and extent of appellant's employment-related disability and residuals. It referred appellant, along with the case record, a SOAF, and a series of questions to Dr. Balint Balog, a Board-certified orthopedic surgeon, to resolve the conflict in medical opinion.

In August 15 and 28, 2024 reports, Dr. Trent found ankle instability and recommended surgery.

On August 21, 2024, Dr. Balog reviewed the SOAF, and the medical history. He performed a physical examination finding no spasms in the lumbar spine, slight effusion in the knees, and no instability of the ankles. Dr. Balog opined that appellant had resolution of her left

knee internal derangement, meniscus tear, lumbosacral sprain and disc derangement. He found that appellant was capable of performing her date-of-injury position without restrictions.

By decision dated October 25, 2024, OWCP terminated appellant's wage-loss compensation and medical benefits, effective that date. It found that the special weight of the medical evidence rested with Dr. Balog, the IME, who had determined in his August 21, 2024 report that she no longer had disability or residuals causally related to the accepted May 4, 2000 employment injury.

On October 29, 2024, appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. The oral hearing took place on January 29, 2025.

In a February 13, 2025 note, Dr. Trent found that appellant's symptoms had not resolved as both ankles had tenderness to palpation over the anterior talofibular ligament and peroneal tendons. He recommended additional physical therapy.

By decision dated March 25, 2025, OWCP's hearing representative affirmed OWCP's October 25, 2024 decision.

On April 11, 2025, appellant, through counsel, requested reconsideration and provided additional information. In a report dated April 7, 2025, Dr. Trent opined that work-related injuries had left appellant with significant impairments involving walking, standing, crouching, kneeling, reaching, and bending. He diagnosed significant degenerative disease including post-traumatic arthritis involving her knee, low back, and both ankles. Dr. Trent found that appellant was disabled from work and that she required ongoing medical treatment.

By decision dated May 1, 2025, OWCP denied modification.

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.⁶ 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.⁷ OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁸ The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁹ To

⁶ *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).

⁷ *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).

⁸ *S.P.*, *id.*; *C.R.*, Docket No. 19-1132 (issued October 1, 2020); *G.H.*, Docket No. 18-0414 (issued November 14, 2018).

⁹ *S.P.*, *id.*; *E.J.*, Docket No. 20-0013 (issued November 19, 2020); *L.W.*, Docket No. 18-1372 (issued February 27, 2019).

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.¹⁰

Section 8123(a) of FECA provides, in pertinent part: “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 [known as a referee physician or an IME] who shall make an examination.”¹¹ This is called an impartial medical examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.¹² When there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an 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.¹³

ANALYSIS -- ISSUE 1

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 October 25, 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 her of the proposed termination or reduction, the reasons for the proposed action, and of an opportunity to respond in writing.¹⁴ Pretermination notices are required in cases where both medical benefits and wage-loss compensation are being terminated.¹⁵ The Board has held that OWCP must follow its procedures and provide notice and opportunity to respond prior to the termination of compensation benefits.¹⁶

The Board finds that when OWCP terminated appellant’s entitlement to wage-loss compensation and medical benefits, it had not issued a pretermination notice. Thus, the termination must be reversed.¹⁷

¹⁰ *C.F.*, *supra* note 6; *M.E.*, Docket No. 20-0877 (issued August 17, 2021); *L.S.*, Docket No. 19-0959 (issued September 24, 2019); *R.P.*, Docket No. 18-0900 (issued February 5, 2019).

¹¹ 5 U.S.C. § 8123(a).

¹² 20 C.F.R. § 10.321; *P.B.*, Docket No. 20-0984 (issued November 25, 2020); *R.C.*, 58 ECAB 238 (2006).

¹³ See *W.N.*, Docket No. 21-0123 (issued December 29, 2021); *A.G.*, Docket No. 21-0315 (issued December 29, 2021); *R.R.*, Docket No. 19-0086 (issued February 10, 2021); *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001); *James P. Roberts*, 31 ECAB 1010 (1980).

¹⁴ 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).

¹⁵ *Id.* at Chapter 2.1400.4(b)(4); see also *J.S.*, Docket No. 17-0937 (issued December 14, 2017).

¹⁶ *S.S.*, Docket No. 19-1091 (issued December 3, 2019).

¹⁷ In light of the Board’s disposition of Issue 1, Issue 2 is rendered moot.

CONCLUSION

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 October 25, 2024.

ORDER

IT IS HEREBY ORDERED THAT the May 1, 2025 decision of the Office of Workers' Compensation Programs is reversed.

Issued: June 25, 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