

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

L.M., Appellant

and

**U.S. POSTAL SERVICE, MILWAUKEE
PROCESSING & DISTRIBUTION CENTER,
Milwaukee, WI, Employer**

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**Docket No. 25-0230
Issued: March 24, 2025**

Appearances:

*Stephanie Leet, Esq., for the appellant¹
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On January 3, 2025 appellant, through counsel, filed a timely appeal from a July 8, 2024 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 the 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 July 8, 2024 decision, OWCP received additional evidence. 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 wage-loss compensation and medical benefits, effective November 18, 2022, as she no longer had disability or residuals causally related to her accepted September 13, 2021 employment injury; and (2) whether appellant has met her burden of proof to establish continuing employment-related disability or residuals, on or after November 18, 2022, causally related to the accepted September 13, 2021 employment injury.

FACTUAL HISTORY

On September 28, 2021 appellant, then a 47-year-old distribution associate, filed a traumatic injury claim (Form CA-1) alleging that on September 13, 2021 she fractured her left tibia, tore her left anterior cruciate ligament (ACL), and sustained right Achilles tendinitis and plantar fasciitis while in the performance of duty.⁴ She explained that she tripped and fell on lip of a rubber mat when entering a building. Appellant stopped work on September 23, 2021. OWCP accepted the claim for oblique nondisplaced fracture of the left proximal tibia. It paid wage-loss compensation on the supplemental rolls commencing November 8, 2021 and on the periodic rolls commencing April 23, 2022.

On March 9, 2022 appellant's attending physician, Dr. Francis Saigh, a physician specializing in family practice, released her to return to modified work on March 14, 2022 with restrictions on standing, walking, squatting, kneeling, and climbing. He determined that she could carry no greater than five pounds and recommended seated work.

In a March 9, 2022 form report, Dr. Saigh related that appellant believed that she had sustained a right foot injury due to an alteration of walking on her right foot due to her accepted left knee injury. He recounted that she was pulling a cart backward on September 22, 2021 and felt a sharp pain in her right foot. Appellant felt that due to her left leg injury she placed an excessive amount of force on her right foot causing a strain or fracture of the right foot when she began pulling the cart. Dr. Saigh reviewed right ankle x-rays dated September 22, 2021 which he noted for a stress fracture of the right calcaneus. He diagnosed strain of unspecified muscle and tendon of the right ankle and foot. Dr. Saigh opined that appellant sustained a strain of the muscles on the ventral surface of the right foot as a result of pulling a large piece of equipment at work.

Appellant continued to receive left knee treatment from Dr. Nic Kampfer, a chiropractor, from February 28 through April 22, 2022.

On April 22, 2022 Dr. Saigh completed a duty status report (Form CA-17) and indicated that appellant could work eight hours a day lifting no greater than 10 pounds intermittently. He related that she could sit for eight hours, stand and walk for one hour each, bend, stoop, and twist

⁴ OWCP assigned the present claim OWCP File No. xxxxxx749. Appellant subsequently filed a February 4, 2022 Form CA-1 for stress fracture of the right calcaneus of the left foot on September 22, 2021 which OWCP denied under OWCP File No. xxxxxx273. OWCP administratively combined OWCP File Nos. xxxxxx273 and xxxxxx749, with the latter serving as the master file.

for two hours each and push and pull for one hour a day. Dr. Saigh advised that appellant could operate machinery for two hours a day.

In a May 2, 2022 form report, Dr. Kampfer opined that appellant was totally disabled from work from May 2 through 16, 2022 due to a fractured right fibula.

The case record contains a May 6, 2022 memorandum of telephone call (Form CA-110) which indicates that an OWCP field nurse reported that appellant fell at home and broke her right fibula.

On May 17, 2022 OWCP referred appellant, together with a statement of accepted facts (SOAF), medical record, and series of questions, for a second opinion evaluation with Dr. Mysore Shivaram, a Board-certified orthopedic surgeon, regarding whether appellant had any continuing disability and residuals due to her accepted employment injury and whether she had sustained a consequential right foot and ankle injury on September 22, 2021.

On June 2, 2022 Dr. Saigh opined that appellant could not perform her date-of-injury job duties, but that she had been assigned limited-duty work with regard to her left knee.

In a June 20, 2022 report, Dr. Shivaram noted his review of the SOAF and appellant's medical record. He also described appellant's September 22, 2021 right foot injury and a slip in her bathroom resulting in right proximal fibula fracture. Dr. Shivaram set forth detailed physical examination findings that appellant could ambulate with full weight bearing, that her response to pain was inappropriate, and that she complained of pain throughout the right lower extremity. He found intact sensation in the right lower extremity and no pain reported along the site of the fracture of the left knee. Dr. Shivaram diagnosed healed oblique nondisplaced fracture of the left proximal tibia, tricompartmental degenerative arthritis of the left knee unrelated to the work injury, chronic right foot and ankle pain unrelated to the work injury of September 13, 2021, and nondisplaced fracture of the right proximal fibula unrelated to the accepted work injury. In response to OWCP's questions, he opined that the work-related condition of nondisplaced oblique fracture of the left proximal tibia had healed. Dr. Shivaram determined that there was no need for further treatment of this accepted condition. He opined that appellant was currently capable of returning to her date-of-injury job with no restrictions.

On July 6, 2022 OWCP advised appellant that it proposed to terminate her wage-loss compensation and medical benefits, as she no longer had residuals or disability causally related to her accepted September 13, 2021 employment injury. It informed her that the weight of the medical opinion evidence rested with the opinion of Dr. Shivaram and afforded her 30 days to submit evidence and argument challenging the proposed action.

OWCP continued to receive medical evidence. Olivia Weber, a physician assistant, completed an April 30, 2022 report diagnosing fracture of the proximal right fibula. On June 6, 2022 Dr. Saigh completed a Form CA-17 and diagnosed right fibular fracture. He provided work restrictions due to this condition.

Appellant provided a series of reports dated September 13, 2021 through April 30, 2022 from physician assistants. She also provided x-ray studies.

In an August 3, 2022 letter, counsel contended that appellant had been diagnosed with additional conditions that affected her ability to work. She requested that a determination be made regarding whether the conditions were consequential or preexisting. Counsel contended that Dr. Shivaram's report was not based on the complete medical record.

On August 4, 2022 Dr. Saigh diagnosed unspecified fracture of the left upper tibia, resolved, chondromalacia patella, and left knee unilateral primary osteoarthritis. He opined that appellant had developed consequential injuries to her left knee as a result of the September 13, 2021 left tibia fracture including chondromalacia patella and osteoarthritis due to alterations of gait pattern following fracture. Dr. Saigh explained that she placed additional weight on the weight-bearing surface of the left knee to avoid axial load at the non-weight-bearing on the lateral portion of her knee where she sustained the fracture and that this additional weight progressed her arthritis beyond its normal degenerative progression.

On October 6, 2022 OWCP provided an updated SOAF, updated medical record, and a series of additional questions in its request for a supplemental report from Dr. Shivaram addressing any consequential injuries as a result of the September 13, 2021 employment injury.

In an October 19, 2022 report, Dr. Shivaram disagreed with Dr. Saigh's findings of a progression of left knee arthritis as a consequence of the September 13, 2021 employment injury. He related that appellant had a history of recurrent dislocation of the patella for which she had previously undergone surgery. Dr. Shivaram noted that left knee x-rays demonstrated preexisting degenerative changes in the left knee with moderate chondromalacia in the lateral compartment and in the patella laterally. He concluded that as appellant had arthritic changes in the knee prior to the September 13, 2021 employment injury, there was no evidence to support that she developed consequential injuries as a result of the accepted left proximal tibia fracture.

By decision dated November 18, 2022, OWCP terminated appellant's wage-loss compensation and medical benefits, effective November 18, 2022. It found that the weight of the medical evidence rested with the June 20 and October 19, 2022 reports of Dr. Shivaram, the second opinion physician.

OWCP continued to receive evidence. In reports dated August 10 through 15, 2022, Dr. Arslan Zaidi, a Board-certified anesthesiologist, described appellant's history of injury on September 31, 2021 and related her ongoing symptoms of left knee pain. He performed a physical examination and reviewed diagnostic studies finding that a magnetic resonance imaging scan of the left knee demonstrated progression of her patellar chondromalacia with significant underlying subchondral edema, and chondromalacia involving her lateral knee compartment along the weight-bearing surfaces. Dr. Zaidi diagnosed primary osteoarthritis of the left knee. He performed cooled radiofrequency ablation of the left knee on September 12, 2022.

On November 15, 2022 Dr. Brent G. Witten, a Board-certified orthopedic surgeon, performed a left knee arthroscopy with chondroplasty of the patella and lateral femoral condyle, and a partial lateral meniscectomy. He continued to provide treatment notes dated November 28, 2022.

On December 16, 2022 appellant, through counsel, requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

By decision dated June 30, 2023, OWCP's hearing representative affirmed OWCP's November 18, 2022 decision.

On June 28, 2024 appellant, through counsel, requested reconsideration. In support thereof, she provided a December 18, 2023 addendum report, wherein Dr. Saigh described the September 13, 2021 employment incident and asserted that appellant's left knee abruptly twisted and extended resulting in a partial meniscal tear as confirmed by the November 15, 2022 arthroscopy. Dr. Saigh explained that when appellant tripped and fell, it put sudden pressure from the abrupt forced twist and extension on the left knee until the meniscus partially tore. He related that the knee joint was forced to flex too far back with disproportionate pressure on the knee when falling and landing on the ground resulting in the partial meniscal tear, which was not degenerative in nature.

By decision dated July 8, 2024, OWCP denied modification.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of benefits.⁵ It may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.⁶ OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁷

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁸ To terminate authorization for medical treatment, OWCP must establish that the employee no longer has residuals of an employment-related condition, which require further medical treatment.⁹

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 impartial medical examiner (IME), who shall make an examination.¹⁰ 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.¹¹ When OWCP has referred the case to an IME for the purpose of

⁵ *S.T.*, Docket No. 21-0611 (issued September 22, 2023); *A.D.*, Docket No. 18-0497 (issued July 25, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁶ *A.G.*, Docket No. 18-0749 (issued November 7, 2018); *see also I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

⁷ *R.R.*, Docket No. 19-0173 (issued May 2, 2019); *T.P.*, 58 ECAB 524 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

⁸ *L.W.*, Docket No. 18-1372 (issued February 27, 2019); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁹ *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *A.P.*, Docket No. 08-1822 (issued August 5, 2009).

¹⁰ 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).

¹¹ 20 C.F.R. § 10.321.

resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.¹²

ANALYSIS -- ISSUE 1

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective November 18, 2022.

OWCP received reports dated April 22, 2022 and August 4, 2022, wherein Dr. Saigh diagnosed unspecified fracture of the left upper tibia, resolved, chondromalacia patella, and left knee unilateral primary osteoarthritis and found that she could perform modified duties. He opined that appellant had developed consequential injuries to her left knee as a result of the September 13, 2021 left tibia fracture including chondromalacia patella and osteoarthritis due to alterations of gait pattern following fracture. Dr. Saigh explained that she placed additional weight on the weight-bearing surface of the left knee to avoid axial load at the non-weight-bearing on the lateral portion of her knee where she sustained the fracture and that this additional weight progressed her arthritis beyond its normal degenerative progression.

OWCP referred appellant to Dr. Shivaram for a second opinion evaluation to determine the status of her accepted conditions and work capacity. In his June 20 and October 19, 2022 reports, Dr. Shivaram diagnosed healed oblique nondisplaced fracture of the left proximal tibia, tricompartmental degenerative arthritis of the left knee unrelated to the work injury, chronic right foot and ankle pain unrelated to the work injury of September 13, 2021, and nondisplaced fracture of the right proximal fibula unrelated to the accepted work injury. He found that she could return to her date-of-injury position without restrictions and disagreed with Dr. Saigh's findings of a progression of left knee arthritis as a consequence of the September 13, 2021 employment injury. Dr. Shivaram determined that left knee x-rays demonstrated preexisting degenerative changes in the left knee with moderate chondromalacia in the lateral compartment and in the patella laterally. He concluded that as appellant had arthritic changes in the knee prior to the September 13, 2021 employment injury, there was no evidence to support that she developed consequential injuries as a result of the accepted left proximal tibia fracture.

It is well established that, when there are opposing medical reports of virtually equal weight and rationale, the case should be referred to an impartial medical examiner (IME) for the purpose of resolving the conflict.¹³ The Board finds that the medical reports of Dr. Shivaram and Dr. Saigh were in conflict on the issue of whether appellant had disability and residuals of her accepted conditions, and thus, are in conflict. OWCP was therefore, required to refer appellant to an IME, pursuant to 5 U.S.C. § 8123(a), to resolve the conflict prior to its termination of her wage-loss compensation and medical benefits.

¹² *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).

¹³ *M.F.*, Docket No. 24-0932 (issued December 19, 2024); *A.N.*, Docket No. 24-0531 (issued September 4, 2024); *S.S.*, Docket No. 24-0773 (issued September 16, 2024); *A.E.*, Docket No. 23-0756 (issued December 14, 2023); *D.P.*, Docket No. 21-0534 (issued December 2, 2021); *N.A.*, Docket No. 21-0542 (issued November 8, 2021); *G.B.*, Docket No. 16-0996 (issued September 14, 2016); *James P. Roberts*, 31 ECAB 1010 (1980).

The Board finds, therefore, that OWCP improperly terminated appellant's wage-loss compensation and medical benefits, effective November 18, 2022.

CONCLUSION

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective November 18, 2022.¹⁴

ORDER

IT IS HEREBY ORDERED THAT the July 8, 2024 decision of the Office of Workers' Compensation Programs is reversed.

Issued: March 24, 2025
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

¹⁴ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.