

³ The Board notes that, following the December 18, 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.*

ISSUE

The issue is whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective December 18, 2024, as she no longer had disability or residuals causally related to her accepted April 8, 2018 employment injury.

FACTUAL HISTORY

This case was previously before the Board.⁴ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On April 8, 2018, appellant, then a 25-year-old mail handler filed a traumatic injury claim (Form CA-1) alleging that on that date she injured her left ankle when she stepped down from a platform and tripped on a hand jack while in the performance of duty. She stopped work on April 8, 2018. OWCP accepted the claim for sprain of the left foot and ankle. It paid appellant wage-loss compensation on the supplemental rolls effective June 9, 2018, and on the periodic rolls effective March 30, 2019.

On April 1, 2019, appellant underwent OWCP-authorized left ankle arthroscopy with synovectomy and left lateral ankle ligament reconstruction with internal brace.

Appellant accepted a full-time light-duty position as a modified mail handler on July 2, 2019.

On February 22, 2021, appellant accepted a modified mail handler position working six hours a day; lifting, carrying, pushing, and pulling up to 10 pounds for one hour a day; walking, standing, twisting, and bending for one hour a day; reaching above the shoulder for three hours a day, and sitting with repetitive movements for six hours a day. She stopped work on June 30, 2021.

Beginning on July 1, 2021, appellant's attending physician, Dr. Manoj Sadhnani, a podiatrist, supported her total disability from work and reported findings including pain and weakness after prolonged standing. He diagnosed instability of the left ankle and possible osteochondritis.

On January 21, 2022, OWCP referred appellant, a statement of accepted facts (SOAF), and a series of questions to Dr. Sean Lager, a Board-certified orthopedic surgeon, for a second opinion examination regarding the extent and degree of any employment-related residuals or disability, whether appellant was capable of returning to her date-of-injury position, or whether she was a candidate for vocational rehabilitation.

OWCP continued to receive evidence. In a January 11, 2022 report, Dr. Sadhnani recounted appellant's ongoing symptoms of pain and weakness after prolonged standing. He diagnosed left ankle instability and possible osteochondritis of the left ankle. Dr. Sadhnani continued to support total disability and recommended additional physical therapy.

⁴ Docket No. 23-0973 (issued January 2, 2024).

In a February 21, 2022 report, Dr. Lager recounted appellant's history of an April 8, 2018 injury and performed a physical examination. He noted a shuffling labored gait and loss of plantar flexion of her left toes, and opined that her subjective complaints did not correspond with his objective findings. Dr. Lager diagnosed left foot and ankle sprain. He related that the work-related condition had resolved as there was no evidence to support that it was still active and causing objective findings. Dr. Lager further related that appellant could return to her date-of-injury position as a mail handler without restrictions. He determined that she did not demonstrate full effort on examination.

In a March 1, 2022 work capacity evaluation (Form OWCP-5c), Dr. Lager indicated that appellant could perform sedentary work lifting up to five pounds for three hours a day.

Dr. Sadhnani completed a note on March 24, 2022, continuing to find that appellant was totally disabled from work due to her accepted left ankle ligament repair, instability, and possible osteochondritis.

In an April 14, 2022 Form OWCP-5c, Dr. Lager found that appellant could return to her date-of-injury position without restrictions.

Dr. Sadhnani provided a treatment note dated June 4, 2022 and found that appellant was totally disabled from work.

On September 17, 2022, Dr. Sadhnani continued to recount appellant's pain and weakness after prolonged standing and repeated his diagnoses. He found that she was totally disabled from work.

On November 22, 2022, OWCP proposed to terminate appellant's wage-loss compensation and medical benefits based on the report of Dr. Lager, the second opinion physician, who found that appellant no longer had disability or residuals causally related to her accepted employment injury. It afforded her 30 days to submit additional evidence or argument, in writing, if she disagreed with the proposed termination.

In a December 8, 2022 response, appellant disagreed with Dr. Lager's conclusions. She provided a December 22, 2022 note, wherein Dr. Sadhnani in which he related that appellant had weakness and pain with range of motion and ambulation.

By decision dated January 6, 2023, 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. Lager, the second opinion physician, who found that appellant no longer had disability or residuals causally related to her accepted employment injury.

Appellant appealed to the Board. By decision dated January 2, 2024, the Board reversed the January 6, 2023 termination decision, finding that there remained an unresolved conflict in the medical opinion evidence between Drs. Sadhnani and Lager.⁵

⁵ *Id.*

On February 23, 2024, OWCP referred appellant, along with the medical record, a SOAF, and a series of questions to Dr. Felix M. Kirven, a Board-certified orthopedic surgeon, for an impartial medical examination to resolve the conflict in medical opinion.

In a March 11, 2024 report, Dr. Kirven, the impartial medical examiner (IME), reviewed the SOAF, the medical records, and described the employment injury. He performed a physical examination and found that appellant displayed symptom magnification including the refusal to move her ankle without distraction, pain with light touch over the anterior and posterior ankle, and give-way weakness on manual muscle testing of the left quadriceps musculature, “and displayed that she could not dorsiflex and plantarflex her ankle. However, when distracted, she is able to do this without incident.” Dr. Kirven found that the April 16, 2018 magnetic resonance imaging (MRI) scan did not show any significant tearing of the anterior talofibular ligament, only some thickening indicating that this was an ankle sprain. He found that appellant’s OWCP-authorized surgery was not medically necessary and that her accepted condition had resolved. Dr. Kirven determined that no further medical treatment was warranted as appellant had a normal ankle examination and no findings consistent with an ongoing injury. He related that she was capable of returning to her date-of-injury position without restrictions or limitations.

On February 28, 2024, Dr. Albert Johnson, a Board-certified orthopedic surgeon, described the April 8, 2018 employment injury, diagnosed post-traumatic strain and sprain talofibular and calcaneofibular ligaments, left ankle and arthroscopic surgery with open reconstruction of the fibular collateral ligament, left ankle. He found that appellant had reached maximum medical improvement (MMI) and applied the American Medical Association’s *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)⁶ to reach two percent permanent impairment of the left lower extremity due to a left ankle sprain.

In a notice dated May 9, 2024, OWCP proposed to terminate appellant’s wage-loss compensation and medical benefits based on Dr. Kirven’s March 11, 2024 report. It afforded her 30 days to submit additional evidence or argument challenging the proposed termination.

On May 23, 2024, appellant, through counsel, objected to Dr. Kirven’s selection as the IME.

OWCP requested a supplemental report from Dr. Kirven addressing Dr. Johnson’s February 28, 2024 report. On November 22, 2024, he reviewed Dr. Johnson’s report and related that it did not change his opinion. Dr. Kirven concluded that appellant did not have tears of the lateral ankle ligaments, did not require surgical reconstruction of the ankle ligaments, and that her physical examination revealed a multitude of non-organic signs.

By decision dated December 18, 2024, OWCP terminated appellant’s wage-loss compensation and medical benefits, effective that date. It found that Dr. Kirven’s opinion constituted the special weight of the medical opinion evidence and established that appellant no longer had disability or residuals causally related to the accepted April 8, 2018 employment injury.

⁶ A.M.A. *Guides* (6th ed. 2009).

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify modification or termination of an employee's benefits.⁷ 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.⁸ OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁹ The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.¹⁰ 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.¹¹

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."¹² 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.¹³ 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.¹⁴

ANALYSIS

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective December 18, 2024, as she no longer had disability or residuals causally related to her accepted April 8, 2018 employment injury.

⁷ *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).

⁸ *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).

⁹ *S.P.*, *id.*; *C.R.*, Docket No. 19-1132 (issued October 1, 2020); *G.H.*, Docket No. 18-0414 (issued November 14, 2018).

¹⁰ *S.P.*, *id.*; *E.J.*, Docket No. 20-0013 (issued November 19, 2020); *L.W.*, Docket No. 18-1372 (issued February 27, 2019).

¹¹ *C.F.*, *supra* note 7; *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).

¹² 5 U.S.C. § 8123(a).

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

¹⁴ *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).

On February 23, 2024, OWCP properly referred appellant to Dr. Kirven for an impartial medical examination to resolve the conflict in medical opinion, pursuant to 5 U.S.C. § 8123(a).

In his March 11 and November 22, 2024 reports, Dr. Kirven provided his review of appellant's history of injury and the medical evidence of record. On examination, he found that appellant displayed symptom magnification including the refusal to move her ankle without distraction, pain with light touch over the anterior and posterior ankle and give-way weakness on manual muscle testing of the left quadriceps musculature. He concluded that appellant did not have tears of the lateral ankle ligaments, did not require surgical reconstruction of the ankle ligaments, and that her physical examination revealed a multitude of non-organic signs. Dr. Kirven determined that no further medical treatment was warranted as appellant had a normal ankle examination and no findings consistent with an ongoing injury. He related that she was capable of returning to her date-of-injury position without restrictions or limitations.

Where a case is referred to an IME for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently rationalized and based on a proper factual and medical background, must be given special weight.¹⁵

The Board thus finds that Dr. Kirven's opinion is entitled to the special weight of the medical evidence and establishes that appellant no longer had disability or residuals causally related to the accepted April 8, 2018 employment injury. He based his opinion on a proper factual and medical history, and provided detailed findings on examination.¹⁶ Dr. Kirven provided a well-rationalized opinion that appellant had no further residuals causally related to her accepted employment injury, explaining that findings on examination and on diagnostic testing demonstrated no continued employment-related condition that resulted in disability or required further medical treatment.¹⁷ As the IME, his opinion is entitled to the special weight of the evidence. Accordingly, OWCP properly relied upon the reports of Dr. Kirven in terminating appellant's wage-loss compensation and medical benefits.¹⁸

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective December 18, 2024, as she no longer had disability or residuals causally related to her accepted April 8, 2018 employment injury.

¹⁵ *R.M.*, Docket No. 24-0894 (issued December 3, 2024); *L.S.*, Docket No. 20-1204 (issued October 4, 2021); *R.O.*, Docket No. 19-0885 (issued November 4, 2019); *Roger Dingess*, 47 ECAB 123 (1995); *James P. Roberts*, *supra* note 14.

¹⁶ *R.M.*, *id.*, *S.V.*, Docket No. 23-0474 (issued August 1, 2023); *J.S.*, Docket No. 20-1409 (issued September 1, 2021).

¹⁷ *See J.P.*, Docket No. 23-0075 (issued March 26, 2023); *J.S.*, *id.*

¹⁸ *See R.M.*, *supra* note 15; *L.S.*, *supra* note 15; *L.B.*, Docket No. 19-1380 (issued February 11, 2020).

ORDER

IT IS HEREBY ORDERED THAT the December 18, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 22, 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