

)	
T.M., Appellant)	
)	
and)	Docket No. 25-0470
)	Issued: May 20, 2025
U.S. POSTAL SERVICE, WORCESTER POST)	
OFFICE, Worcester, MA, Employer)	
)	

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

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 10, 2025 appellant, through counsel, filed a timely appeal from a March 31, 2025 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.

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.*

ISSUE

The issue is whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation, effective February 13, 2024, as he no longer had disability causally related to his accepted July 2, 2012 employment injury.

FACTUAL HISTORY

On July 2, 2012 appellant, then a 30-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that, on that date, he sustained a lower back injury when the postal vehicle he was operating was rear ended while in the performance of duty. OWCP accepted the claim for aggravation of preexisting left-sided lumbar radiculopathy. It paid appellant on the supplemental rolls for wage-loss compensation commencing August 20, 2012, and on the periodic rolls for wage-loss compensation commencing November 18, 2012.

By decision dated December 29, 2021, OWCP expanded acceptance of the claim to include other intervertebral lumbosacral disc displacement and permanent aggravation of thoracic or lumbosacral neuritis or radiculitis, left sided.

On September 16, 2022 OWCP received an August 22, 2022 report from the U.S. Postal Service Office of Inspector General (OIG). The case summary report indicated that the OIG's office had conducted surveillance of appellant from May 2015 through April 2020. Photographs were attached of appellant performing various activities near his home. Photographs from March and April 2020 showed appellant moving a large box to a hand truck and pulling the box on to the hand truck; appellant carrying various items; appellant pushing a loaded wheelbarrow; appellant pushing a snow blower; appellant pushing a lawn mower; appellant carrying and holding a ladder; and appellant squatting on a lawn.

A January 6, 2023 statement of accepted facts (SOAF) indicated that OWCP had expanded the acceptance of appellant's claim to include permanent aggravation of other intervertebral lumbosacral disc displacement; and left thoracic and lumbosacral neuritis or radiculitis, as causally related to appellant's July 2, 2012 employment injury.

On April 24, 2023 OWCP referred appellant, along with the January 6, 2023 SOAF, the case record, and a series of questions, to Dr. Bernard Brady, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine the nature and extent of appellant's employment-related conditions and his work capacity. The OIG's surveillance photographs were also provided for the physician's review.

In a report dated June 1, 2023, Dr. Brady examined appellant and recounted his history of injury as described by the appellant, provided his review of the medical evidence and surveillance photographs, and diagnosed L5-S1 degenerative disc disease status post anterior interbody fusion. He related that he had reviewed appellant's surveillance photographs which were taken between 2015 and 2022. Dr. Brady recounted that while appellant indicated that he had significant impairment of his back and that he was unable to perform vigorous bending or lifting, the surveillance photographs showed appellant at various times bending fully, pushing wheelbarrows, climbing ladders, and carrying a leaf blower backpack. He concluded that appellant temporarily aggravated his preexisting lumbar degenerative disease and had returned to his preinjury status,

with the exception of being able to perform very heavy work. Dr. Brady further opined that appellant's work-related conditions had resolved although his range of motion was reduced, as his lower extremities had normal strength, his knee and ankle reflexes were 2+, and his calf circumference was equal bilaterally with no evidence of atrophy.

On June 21, 2023 OWCP requested that Dr. Brady clarify his report. It noted that pursuant to the SOAF, the claim was accepted for permanent aggravation of other lumbar intervertebral disc displacement. While he had indicated that appellant's work injury temporarily aggravated his preexisting lumbar degenerative disease, the aggravation was accepted as permanent, not temporary. OWCP asked Dr. Brady to address whether appellant could return to his date-of-injury position as a temporary/contracted city carrier, if the aggravation was permanent.

Dr. Brady, in a July 18, 2023 addendum, explained that the surveillance photographs indicated that appellant was able to perform more activities than he related. He concluded that appellant's July 2, 2012 injury permanently aggravated his preexisting lumbar degenerative disease, and the surveillance photographs indicated that appellant's permanent aggravation was no longer causing residuals which would restrict him from his date-of-injury position.

On July 31, 2023 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits, finding that his July 2, 2012 employment injury had resolved. It found that the weight of medical evidence rested with the June 1 and July 18, 2023 reports of Dr. Brady, OWCP's second opinion physician. OWCP afforded 30 days to submit additional evidence or argument, in writing, if he disagreed with the proposed termination. No additional evidence was received.

By decision dated September 1, 2023, OWCP finalized the termination of appellant's wage-loss compensation and medical benefits, effective that same day. It found that the weight of the medical evidence rested with Dr. Brady, the second opinion physician, who had determined in his June 1 and July 18, 2023 reports that appellant no longer had disability or residuals due to the July 2, 2012 employment injury, and that he was capable of returning to his date-of injury position.

On September 26, 2023 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. Following a preliminary review, by decision dated November 29, 2023, OWCP's hearing representative reversed the September 1, 2023 decision finding that OWCP did not meet its burden of proof to terminate appellant's medical and wage-loss compensation benefits, and therefore, appellant's compensation benefits were to be retroactively reinstated to the date of termination. The hearing representative found that it did not appear that Dr. Brady had reviewed the SOAF as no mention of it was made in his initial June 1, 2023 report. Further, he did not address the accepted conditions of thoracic or lumbosacral neuritis or radiculitis, and aggravation of preexisting left-sided lumbar radiculopathy. Additionally, the hearing representative found Dr. Brady's opinion appeared supportive of ongoing medical residuals. Upon return of the case, the hearing representative instructed OWCP to request a position description from the employing establishment. Following receipt of the position description it should compare the weight requirement of the position with OWCP's definition of "Very Heavy Work" which was defined as exerting in excess of 100 pounds of force occasionally, or in excess of 50 pounds of force frequently, or in excess of 20 pounds of force constantly to move objects. The hearing representative also instructed OWCP to audit the case file and determine if aggravation of preexisting left side lumbar radiculopathy, which was accepted by letter dated July 19, 2012, should be added to the SOAF or whether it should be rescinded.

Following this development, the hearing representative indicated that OWCP should amend the SOAF, request a supplemental report from Dr. Brady, and issue a *de novo* decision.

On December 19, 2023 a position description for city carrier was submitted to the record. The position description indicated that a city carrier may be required to carry mail weighing up to 35 pounds in shoulder satchels, or other equipment, and to load/unload mail containers weighing up to 70 pounds.

On January 11, 2024 OWCP proposed to terminate appellant's wage-loss compensation, finding that his July 2, 2012 employment injury was no longer disabling. It found that the weight of medical evidence rested with the June 1 and July 18, 2023 reports of Dr. Brady, OWCP's second opinion physician, who opined that appellant no longer had disability causally related to his accepted July 2, 2012 employment injury. OWCP afforded appellant 30 days to submit additional evidence or argument, in writing, if he disagreed with the proposed termination.

By decision dated February 13, 2024, OWCP finalized the termination of appellant's wage-loss compensation effective that same day. It found that the weight of the medical evidence rested with Dr. Brady, the second opinion physician, who had determined in his June 1 and July 18, 2023 reports that appellant no longer had disability due to the July 2, 2012 employment injury and was capable of returning to his date-of injury position.

On May 25, 2024 appellant requested reconsideration.

By decision dated October 4, 2024, OWCP denied reconsideration of the merits of the claim, pursuant to 5 U.S.C. § 8128(a).

On February 11, 2025 appellant, through counsel, requested reconsideration, asserting that termination was improper because Dr. Brady's opinion was based on an incomplete SOAF, and only addressed appellant's aggravation of preexisting lumbar degenerative disease. Counsel also argued that appellant had never been provided an opportunity to review the surveillance video, and therefore it should be excluded.

On February 13, 2025 OWCP prepared an updated SOAF and requested a supplemental report from Dr. Brady. The February 13, 2025 SOAF listed permanent aggravation of other intervertebral lumbosacral disc displacement, left-sided thoracic or lumbosacral neuritis or radiculitis, and aggravation of preexisting left-sided lumbar radiculopathy as the accepted conditions.

In a supplemental report dated March 13, 2025, Dr. Brady reviewed the updated SOAF and advised that his opinion was unchanged from his prior reports. He recounted that the issue to be determined was appellant's degree of disability. Dr. Brady related that as of appellant's June 1, 2023 physical examination, he had no evidence of muscle atrophy, reflex asymmetry; forward flexion was only 15 to 20 degrees, but he was noted to be bending much further in the video surveillance. He concluded that appellant was able to return to his date-of-injury position.

By decision dated March 31, 2025, OWCP denied modification of the February 13, 2024 decision, noting that Dr. Brady, in his March 13, 2025 supplemental report, advised that his opinion was unchanged after reviewing the updated SOAF.

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.³ 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.⁴ OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵

ANALYSIS

The Board finds that OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation, effective February 13, 2024.

OWCP referred appellant to Dr. Brady for a second opinion evaluation to determine the status of his accepted conditions and work capacity. It prepared a SOAF on January 6, 2023, listing permanent aggravation of other intervertebral lumbosacral disc displacement, and left thoracic and lumbosacral neuritis or radiculitis as the accepted conditions. The SOAF did not list the accepted condition of aggravation of preexisting left sided lumbar radiculopathy. Dr. Brady provided a June 1, 2023 report wherein he opined that appellant temporarily aggravated his preexisting lumbar degenerative disease and had returned to his preinjury status with the exception of being able to perform very heavy work. In an addendum dated July 18, 2023, he opined that the permanent aggravation appellant's preexisting lumbar degenerative disease was no longer disabling, and that appellant could return to his date-of-injury position.

It is OWCP's responsibility to provide a complete and proper frame of reference for a physician by preparing a SOAF.⁶ OWCP's procedures dictate that, when a district medical adviser, second opinion specialist, or referee physician renders a medical opinion based on a SOAF, which is incomplete or inaccurate, or does not use the SOAF as the framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether.⁷

³ See *J.P.*, Docket No. 23-0075 (issued August 22, 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).

⁴ See *J.P.*, *id.*; *R.P.*, *id.*; *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

⁵ *J.P.*, *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).

⁶ *R.V.*, Docket No. 23-1151 (issued April 9, 2024); *M.B.*, Docket No. 21-0060 (issued March 17, 2022); *J.N.*, Docket No. 19-0215 (issued July 15, 2019); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁷ *R.V.*, *id.*; *R.W.*, Docket No. 19-1109 (issued January 2, 2020); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3 (October 1990).

At the time of the February 13, 2024 termination of wage-loss compensation, Dr. Brady's opinion was not based on a proper SOAF. As such, it is of diminished probative value.⁸ The Board thus finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation, effective February 13, 2024.⁹

CONCLUSION

The Board finds that OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation, effective February 13, 2024.

ORDER

IT IS HEREBY ORDERED THAT the March 31, 2025 decision of the Office of Workers' Compensation Programs is reversed.

Issued: May 20, 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

⁸ *Id.* See also *B.C.*, Docket No. 20-1672 (issued February 8, 2023); *C.S.*, Docket No. 20-1475 (issued October 4, 2021).

⁹ On reconsideration counsel argued that the surveillance photographs provided to Dr. Brady were not provided to appellant, and therefore Dr. Brady's opinion should be stricken from the record. OWCP procedures provide that once a surveillance video is provided to OWCP with a request that it be used in the management of the case, it becomes part of the official case record and a copy will be released to the claimant, if he or she requests it, just like any other portion of the case record. Its procedures make reference to *J.M.*, 58 ECAB 478 (2007), wherein the Board held that, if the claimant requests a copy of surveillance video, one should be made available and the claimant given a reasonable opportunity to comment regarding the accuracy of the recording. In the present case, appellant was provided an opportunity to view the surveillance photographs and comment prior to the February 13, 2024 termination of wage-loss benefits.