

² 5 U.S.C. § 8101 *et seq.*

ISSUES

The issues are: (1) whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective October 2, 2024, as he no longer had disability or residuals causally related to his accepted February 2, 2016 employment injury; and (2) whether appellant has met his burden of proof to establish continuing disability or residuals, on or after October 2, 2024, causally related to the accepted February 2, 2016 employment injury.

FACTUAL HISTORY

This case has previously been before the Board on a different issue.³ The facts and circumstances of the case as set forth in the Board's prior order are incorporated herein by reference. The relevant facts are as follows.

On February 2, 2016 appellant, then a 53-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on February 1, 2016 he experienced a pinch, followed by extreme pain, in his right leg after he stepped out of his long-life vehicle while in the performance of duty.⁴ He stopped work on that date. OWCP accepted the claim for right hip psoas tendinitis and right hip trochanteric bursitis. It paid appellant wage-loss compensation on the supplemental rolls commencing March 18, 2026, and on the periodic rolls commencing October 29, 2016.

In reports dated February 4, 2016 through February 28, 2017, appellant's attending physician, Dr. Michael Hebrard, a Board-certified physiatrist, noted that he continued to report right hip pain. He diagnosed right psoas tendinitis and right trochanteric bursitis. Dr. Hebrard recommended continued acupuncture to treat appellant's accepted conditions. He found that appellant was totally disabled from work.

On February 24, 2017 OWCP referred appellant, together with a statement of accepted facts (SOAF), the medical record, and series of questions, for a second opinion evaluation with Dr. John Welborn, Jr., a Board-certified orthopedic surgeon, regarding whether appellant had any continuing disability and/or residuals due to his accepted employment injury.

In a March 20, 2017 report, Dr. Welborn related appellant's history of injury on February 1, 2016 and noted his review of the SOAF. He performed a physical examination and diagnosed nonemployment-related lumbar spondylolisthesis and lumbar degenerative disc disease. Dr. Welborn found that appellant was disabled from work.

On July 28, 2017 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits. It found that Dr. Welborn's report was entitled to the weight of the medical opinion evidence. OWCP afforded appellant 30 days to submit additional evidence or argument in writing, if he disagreed with the proposed termination.

³ *Order Remanding Case*, Docket No. 21-0241 (issued October 28, 2021).

⁴ OWCP assigned the present claim OWCP File No. xxxxxx928. Appellant has a previous-accepted August 9, 2012 traumatic injury claim for sprain of the thoracic spine under OWCP File No. xxxxxx831.

In a note dated September 25, 2017, Dr. Hebrard continued to relate appellant's complaints of pain and discomfort in the right hip. On physical examination, he found tenderness to palpation in the peritrochanteric region bilaterally and tightness in the iliotibial (IT) band. Dr. Hebrard diagnosed psoas tendinitis, right hip and trochanteric bursitis, right hip. He recommended a functional capacity evaluation, further recommended examination and treatment by a pain management physician, and found that appellant was temporarily totally disabled.

By decision dated August 30, 2017, OWCP terminated appellant's wage-loss compensation, effective August 29, 2017. On September 6, 2017 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on February 5, 2018.

OWCP continued to receive evidence. In a January 8, 2018 report, Dr. Hebrard noted his review of Dr. Welborn's report and opined that appellant had a chronic disabling condition of the lumbar spine and hip as the result of cumulative trauma. He continued to diagnose psoas tendinitis and trochanteric bursitis of the right hip and found that appellant was totally disabled.

By decision dated April 13, 2018, OWCP's hearing representative vacated the August 30, 2017 decision, finding that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation as Dr. Welborn's report lacked medical rationale.

On May 11, 2018 and June 26, 2018 OWCP referred appellant for an additional second opinion evaluation with Dr. Welborn. Appellant did not attend the evaluation. In a letter dated July 24, 2018, counsel requested that OWCP schedule an examination by a different physician.

In notes dated October 1, 2018 through November 19, 2018, Dr. Hebrard diagnosed psoas tendinitis and trochanteric bursitis of the right hip and continued to find that appellant was totally disabled from work.

By separate decision dated January 10, 2019, OWCP suspended appellant's wage-loss compensation and medical benefits in accordance with 5 U.S.C. § 8123(d) as he refused to submit to a medical examination. On January 18, 2019 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held on May 15, 2019. By decision dated June 28, 2019, OWCP's hearing representative affirmed the January 10, 2019 suspension decision.

On January 15, 2020 OWCP referred appellant, together with an updated SOAF, medical record, and series of questions, for an additional second opinion evaluation with Dr. Welborn, regarding whether appellant had any continuing disability and residuals due to his accepted employment injury.

In notes dated January 21 through November 19, 2019, Dr. Hebrard diagnosed psoas tendinitis and trochanteric bursitis of the right hip and continued to find that appellant was totally disabled. On September 16, 2019 he included an additional diagnosis of chronic pain disorder. Dr. Hebrard provided a treatment note dated February 4, 2020 repeating his diagnoses and findings of disability.

In a March 2, 2020 report, Dr. Welborn related appellant's history of injury and diagnosed preexisting and nonindustrial lumbar degenerative disc disease and lumbar spondylolisthesis. He found that appellant no longer experienced residuals of right hip trochanteric bursitis and psoas tendinitis as there were no objective findings in support of these conditions. Dr. Welborn opined that appellant's reports of pain were out of proportion to his electrodiagnostic findings. He completed a work capacity evaluation (Form OWCP-5c) and found that appellant could not return to his date-of-injury position, but could perform sedentary strength level work without restrictions.

On April 3, 2020 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits. It found that Dr. Welborn's reports were entitled to the weight of the medical opinion evidence. OWCP afforded appellant 30 days to submit additional evidence or argument in writing, if he disagreed with the proposed termination.

By decision dated May 6, 2020, OWCP terminated appellant's wage-loss compensation and medical benefits effective that date. On May 14, 2020 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on August 14, 2020.

OWCP continued to receive medical evidence. On April 14, 2020 Dr. Hebrard found that appellant was totally disabled. He repeated the accepted diagnoses and requested authorization for electrodiagnostic studies. On July 25, 2020 appellant underwent a right hip magnetic resonance imaging (MRI) scan which demonstrated right worse than left iliopsoas bursitis, bilateral hamstring tendinosis with low-grade partial-thickness insertional tear of the right hamstring.

By decision dated October 29, 2020, OWCP's hearing representative found Dr. Welborn's second opinion report was entitled to the weight of the medical evidence and established that appellant had no continuing employment-related disability or medical residuals after May 6, 2020.

Appellant, through counsel, appealed the October 29, 2020 decision to the Board. By an October 28, 2021 order, the Board directed OWCP to administratively combine appellant's claims under OWCP File Nos. xxxxxx928 and xxxxxx831 to be followed by a *de novo* decision.⁵

On April 6, 2022 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits. It found that Dr. Welborn's reports were entitled to the weight of the medical opinion evidence. OWCP afforded appellant 30 days to submit additional evidence or argument in writing, if he disagreed with the proposed termination.

OWCP subsequently received a February 15, 2021 note, wherein Dr. Hebrard reviewed the July 25, 2020 MRI scan and diagnosing psoas tendinitis and trochanteric bursitis of the right hip. Dr. Hebrard also found a partial labral tear of the right hip as demonstrated by the MRI scan and requested an additional second opinion evaluation of this condition.

⁵ OWCP has administratively combined appellant's claims with OWCP File No. xxxxxx928 serving as the master file.

On April 28 and June 28, 2022 Dr. Hebrard repeated his findings and diagnoses. He also reviewed an April 20, 2022 pelvis x-ray which demonstrated shallow acetabula, pubic symphyseal sclerosis, and osteophytosis of the iliac wing, bilaterally. In his April 28, 2022 report, Dr. Hebrard noted that Dr. Welborn had not reviewed the recent diagnostic studies which refuted his conclusions. On June 25, 2022 appellant underwent an additional right hip MRI scan which demonstrated degenerative changes of the right hip. Dr. Hebrard found that appellant was totally disabled on July 11, 2022.

On October 13, 2022 OWCP referred appellant, together with an updated SOAF, medical record, and series of questions, for an additional second opinion evaluation with Dr. Welborn, regarding whether appellant had any continuing disability and residuals due to his accepted employment injury.

In a December 5, 2022 report, Dr. Welborn diagnosed bursitis of the right hip, lumbar degenerative disc disease, and lumbar spondylolisthesis. He continued to opine that the accepted right hip bursitis and psoas tendinitis had resolved and that appellant was experiencing back pain from his preexisting lumbar degeneration.

On March 10, 2023 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits. It found that Dr. Welborn's reports were entitled to the weight of the medical opinion evidence. OWCP afforded appellant 30 days to submit additional evidence or argument in writing, if he disagreed with the proposed termination.

By *de novo* decision dated May 1, 2023, OWCP terminated appellant's wage-loss compensation and medical benefits, effective that date. It found that the weight of the medical evidence rested with the February 27, 2023 report of Dr. Welborn, the second opinion physician. On May 17, 2023 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings of Review. A hearing was held on October 13, 2023.

By decision dated April 5, 2024, OWCP's hearing representative vacated the May 1, 2023 decision due to an unresolved conflict of medical opinion evidence between Drs. Hebrard and Welborn regarding whether appellant continued to experience continuing employment-related disability and medical residuals.

In an April 17, 2024 letter, OWCP informed appellant that there was a conflict in the medical opinion evidence and referred him, an updated SOAF, and a series of questions to Dr. Warren J. Strudwick, Jr., a Board-certified orthopedic surgeon, to serve as the impartial medical examiner (IME) to resolve the conflict in the medical opinion evidence.

The April 11, 2024 SOAF noted that the current claim was administratively combined with OWCP File No. xxxxxx831, but provided no further information regarding that claim. It listed the July 25, 2020 and June 25, 2022 right hip MRI scans.

In a May 14, 2024 report, Dr. Strudwick noted his review of the SOAF and the medical record, noting diagnostic studies. He performed a physical examination and diagnosed lumbar degenerative disease with radicular symptoms and documented L4-5 bilateral radiculopathy and sciatica, neurogenic claudication secondary to L3-5 spinal stenosis, mild-to-moderate degenerative joint disease, bilateral hips, chronic pain syndrome, depression, psoas tendinitis and greater

trochanteric bursitis, right hip, resolved. Dr. Strudwick found that the accepted conditions had resolved with no loss of range of motion, tenderness, or pain in the hip. Furthermore, he determined that the original diagnosis was “somewhat misdiagnosed” and while it was likely that appellant had a preexisting degenerative change of his hips, the primary problem causing his symptoms and disability was mobile spondylolisthesis which was unstable and spinal stenosis from L3-5. Dr. Strudwick found that these conditions would give rise to the sciatica and neurogenic claudication that appellant had experienced.

On June 28, 2024 OWCP advised appellant of its proposed termination of his wage-loss compensation and medical benefits as the evidence established that he no longer had any employment-related residuals or disability due to his February 1, 2016 employment injury. It afforded him 30 days to submit evidence or argument if he disagreed with the proposed termination of benefits.

By decision dated October 2, 2024, OWCP terminated appellant’s wage-loss compensation and medical benefits, effective that date. It found that the opinion of Dr. Strudwick, the IME, represented the special weight of the evidence and established that appellant had no further residuals or disability due to his accepted employment injury.

On October 10, 2024 appellant, through counsel, requested an oral hearing before a representative of OWCP’s Branch of Hearings and Review. A hearing was held on January 14, 2025.

By decision dated March 28, 2025, OWCP’s hearing representative affirmed the October 25, 2023 termination decision.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification 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 Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁸

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

⁶ *K.T.*, Docket No. 22-1038 (issued June 22, 2023); *M.M.*, Docket No. 17-1264 (issued December 3, 2018); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁷ *T.N.*, Docket No. 22-0721 (issued September 14, 2022); *A.T.*, Docket No. 20-0334 (issued October 8, 2020); *E.B.*, Docket No. 18-1060 (issued November 1, 2018).

⁸ *T.N.*, *id.*; *R.L.*, Docket No. 20-1611 (issued September 30, 2022); *C.R.*, Docket No. 19-1132 (issued October 1, 2020); *Del K. Rykert*, 40 ECAB 284 (1988).

appoint a third physician (known as a referee physician or IME) who shall make an examination.⁹ For a conflict to arise, the opposing physicians' viewpoints must be of virtually equal weight and rationale.¹⁰

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 October 2, 2024.

OWCP determined that a conflict in medical opinion arose between Dr. Hebrard, appellant's treating physician, and Dr. Welborn, OWCP's second opinion, as to the extent of appellant's employment-related conditions and continuing employment-related disability. It properly referred appellant to Dr. Strudwick to resolve the conflict in medical opinion, pursuant to 5 U.S.C. § 8123(a).¹¹

OWCP provided Dr. Strudwick a SOAF dated April 11, 2024, which noted that the current claim was administratively combined with OWCP File No. xxxxxx831, but provided no additional information regarding that claim. For example, the SOAF did not reference the accepted condition or information regarding appellant's return to work following that injury. It is OWCP's responsibility to provide a complete and proper frame of reference for a physician by preparing a SOAF. OWCP's procedures dictate that when an OWCP medical adviser, second opinion specialist, or IME 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.¹² As the SOAF provided to Dr. Strudwick was incomplete, his opinion is of diminished probative value.¹³

The Board finds, therefore, that OWCP improperly terminated appellant's wage-loss compensation and medical benefits, effective October 2, 2024.

CONCLUSION

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective October 2, 2024.

⁹ 5 U.S.C. § 8123(a); *R.H.*, Docket No. 20-1442 (issued February 9, 2022); *Q.S.*, Docket No. 20-0701 (issued November 10, 2021).

¹⁰ *R.H., id.*; *Darlene R. Kennedy*, 57 ECAB 414, 416 (2006); *James P. Roberts*, 30 ECAB 1010 (1980).

¹¹ *See supra* note 9.

¹² *See C.M.*, Docket No. 24-0581 (issued October 8, 2024); *C.B.*, Docket No. 24-0597 (issued October 8, 2024); *U.R.*, Docket No. 23-0614 (issued September 26, 2024); *V.L.*, Docket No. 24-0739 (issued August 26, 2024); *S.T.*, Docket No. 18-1144 (issued August 9, 2019).

¹³ *Id.*; *see also S.T., id.*; *Y.D.*, Docket No. 17-0461 (issued July 11, 2017).

ORDER

IT IS HEREBY ORDERED THAT the March 28, 2025 decision of the Office of Workers' Compensation Programs is reversed.

Issued: May 19, 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