

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

S.V., Appellant

and

**DEPARTMENT OF THE ARMY, RESEARCH
DEVELOPMENT & ENGINEERING
COMMAND, Fort Monmouth, NJ, Employer**

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) **Docket No. 25-0688**
) **Issued: September 5, 2025**
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Appearances:

Daniel M. Goodkin, 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 July 11, 2025 appellant, through counsel, filed a timely appeal from a March 11, 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 appellant has met his burden of proof to establish continuing disability or residuals on or after October 19, 2022, causally related to his accepted May 28, 1975 employment injury.

FACTUAL HISTORY

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

On May 28, 1975 appellant, then a 24-year-old mason helper, filed a traumatic injury claim (Form CA-1) alleging that on that date he sustained injury to his lower back, right hip, and leg when rodding a concrete sidewalk while in the performance of duty. He stopped work on that date and returned to light-duty work on June 2, 1975. OWCP accepted the claim for lumbosacral strain, and subsequently expanded the acceptance of the claim to include bilateral lumbar radiculopathy. OWCP paid appellant wage-loss compensation on the periodic rolls.

Following further development of the medical evidence, on July 12, 2022, OWCP issued a notice of proposed termination of appellant's wage-loss compensation and medical benefits as his employment-related disability and residuals had ceased, based on the opinion of impartial medical examiner (IME), Dr. David Weiss, an osteopath Board-certified in orthopedic surgery. It related that Dr. Weiss resolved the conflict of medical opinion regarding the status of the accepted conditions between appellant's treating physician, Dr. Nasser Ani, a Board-certified orthopedic surgeon, and OWCP's second opinion physician Dr. Frank J. Corrigan, a Board-certified orthopedic surgeon. OWCP afforded appellant 30 days to submit additional evidence or argument if he disagreed with the proposed termination of benefits. It thereafter received medical evidence previously of record.

By decision dated October 19, 2022, OWCP finalized the proposed termination of appellant's wage-loss compensation and medical benefits, effective that date. It determined that the special weight of the medical opinion evidence rested with the opinion of Dr. Weiss, the IME. Dr. Weiss opined that appellant no longer had residuals or disability due to his accepted employment injury; rather, he had progressive age-related degenerative disc disease and osteoarthritis which was not causally related to his accepted employment injury.

On February 17, 2023 appellant appealed to the Board. By decision dated August 1, 2023, the Board affirmed the October 19, 2022 termination decision,⁴ finding that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective October 19, 2022. The Board found that Dr. Weiss' opinion was entitled to the special weight of the medical evidence because it was well rationalized and based on a proper factual and medical history.

³ Docket No. 20-0906 (issued February 11, 2021); Docket No. 23-0474 (issued August 1, 2023).

⁴ *Id.*

On July 10, 2024 appellant, through counsel, requested reconsideration and submitted additional medical evidence.

In a June 4, 2024 report, Dr. Ani related that appellant had been his patient since October 2018. He reviewed the June 8, 2022 report from Dr. Weiss and disagreed with his conclusion that appellant's accepted work-related conditions had resolved. Dr. Ani explained that appellant had no lower back symptoms prior to the injury, but his symptoms had continued following the injury without any change or significant relief. While noting that appellant's age contributed to his degenerative condition, Dr. Ani stated that the May 28, 1975 injury was the cause of appellant's symptoms.

By decision dated July 12, 2024, OWCP denied modification of its termination decision.

On February 27, 2025 appellant, through counsel, requested reconsideration. No additional evidence was received.

By decision dated March 11, 2025, OWCP denied modification of the July 12, 2024 decision.

LEGAL PRECEDENT

Once OWCP properly terminates compensation benefits, the burden shifts to appellant to establish continuing residuals or disability after that date, causally related to the accepted employment injury.⁵ To establish causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background, supporting such causal relationship.⁶

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish continuing disability or residuals on or after October 19, 2022, causally related to his accepted May 28, 1975 employment injury.

On prior appeal, the Board found that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits based on the opinion of Dr. Weiss, the IME, who found that appellant no longer had disability or residuals causally related to the accepted employment injury. As the Board previously affirmed the termination of appellant's wage-loss compensation and medical benefits, absent further merit review of the medical evidence by OWCP pursuant to section 8128 of FECA, this issue is *res judicata*.⁷

⁵ See *S.M.*, Docket No. 18-0673 (issued January 25, 2019); *C.S.*, Docket No. 18-0952 (issued October 23, 2018); *Manuel Gill*, 52 ECAB 282 (2001).

⁶ *Id.*

⁷ *R.B.*, Docket No. 19-1032 (issued October 25, 2019); *L.C.*, Docket No. 18-1759 (issued June 26, 2019); *I.J.*, 59 ECAB 408 (2008).

Following the Board's August 1, 2023 decision, OWCP received a June 4, 2024 report wherein Dr. Ani noted his disagreement with Dr. Weiss. However, Dr. Ani had been on one side of the conflict in medical evidence which was resolved by Dr. Weiss as the IME. The Board has long held that reports from a physician who was on one side of a medical conflict that a medical impartial specialist resolved, are generally insufficient to overcome the special weight accorded to the report of the IME, or to create a new conflict.⁸ The report from Dr. Ani, therefore, is insufficient to establish continuing disability or residuals on or after October 19, 2022.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish continuing disability or residuals on or October 19, 2022, causally related to his accepted May 28, 1975 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the March 11, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 5, 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

⁸ *E.B.*, Docket No. 24-0780 (issued June 5, 2025); *E.H.*, Docket No. 19-1352 (issued December 18, 2019).