

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

C.A., Appellant)	
)	
and)	Docket No. 23-1139
)	Issued: April 1, 2026
U.S. POSTAL SERVICE, UNION CITY POST OFFICE, Union City, CA, Employer)	
)	

Appearances:
Appellant, pro se
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 September 5, 2023 appellant filed a timely appeal from a March 8, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ 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.³

¹ Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. See 20 C.F.R. § 501.3(e)-(f). The 180th day following OWCP's March 8, 2023 decision was September 4, 2023. As this fell on a federal holiday, appellant had until the next business day, which was Tuesday, September 5, 2023, to file the appeal. See 20 C.F.R. § 501.3(f)(3). See also *T.T.*, Docket No. 21-1278 (issued March 29, 2022).

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the March 8, 2023 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.

ISSUES

The issues are: (1) whether OWCP has met its burden of proof to terminate appellant's entitlement to attendant services, effective June 10, 2021; and (2) whether appellant has met his burden of proof to establish continued entitlement to attendant services on or after June 10, 2021.

FACTUAL HISTORY

On December 22, 1998 appellant, then a 45-year-old part-time flexible city carrier, filed a traumatic injury claim (Form CA-1) alleging that, on that date, he injured his back when he fell on black ice when delivering mail while in the performance of duty. OWCP accepted the claim for sprain of the back. Appellant stopped work on the date of injury, returned to work on December 29, 1998, and worked intermittently thereafter. OWCP paid him wage-loss compensation.

In reports dated July 7, 2016 through August 31, 2018, Dr. Douglas Abeles, a Board-certified orthopedic surgeon, noted the December 22, 1998 employment injury and diagnosed cervicalgia, cervical disc disorder with radiculopathy, impingement syndrome of the right shoulder, complete rotator cuff tear or rupture of right shoulder, low back pain, radiculopathy of the lumbar region, bilateral sciatica, and unilateral primary osteoarthritis of the right hip. He opined that appellant was totally disabled from work and prescribed attendant services for activities of daily living and hygiene for four hours per day, seven days per week. OWCP authorized attendant services for four hours per day, seven days per week during the periods September 27 through December 31, 2016 and January 12, 2017 through August 31, 2018.

On September 20, 2018 Dr. Abeles prescribed attendant services for seven hours per day, seven days per week.

OWCP authorized attendant services for seven hours per day, seven days per week during the period September 1, 2018 through May 31, 2019.

In reports dated May 13, 2019 through February 11, 2020, Dr. Abeles continued to recommend attendant services for seven hours per day, seven days per week.

OWCP authorized attendant services for four hours per day, seven days per week for the period June 1, 2019 through March 31, 2020. It indicated that there was insufficient medical rationale to support the need for attendant services more than four hours per day.

On March 5, 2020 OWCP expanded the acceptance of appellant's claim to include aggravation of lumbar disc herniation and adjustment disorder with anxiety.

On March 11, 2020 OWCP referred appellant, along with the medical record, a statement of accepted facts (SOAF) and a series of questions, to Dr. Michael Bronshvag, a Board-certified neurologist, for a second-opinion evaluation regarding appellant's entitlement to attendant services.

In an April 28, 2020 report, Dr. Bronshvag reviewed appellant's history of injury, noted the accepted conditions, and observed normal neurological examination findings. He recommended further evaluation by an orthopedic surgeon and a functional capacity evaluation (FCE) to determine the necessity of attendant services.

In a June 24, 2020 report, Jed Sussman, a licensed psychologist, indicated that chronic anxiety and depression impacted appellant's ability to function and carry out basic activities of daily living.

Appellant underwent an FCE on July 1, 2020.

In a supplemental report dated July 9, 2020, Dr. Bronshvag reviewed the FCE and opined that appellant did not have a neurological need for attendant services.

OWCP subsequently referred appellant along with the medical record, a SOAF, and a series of questions to Dr. J. Hearst Welborn, a Board-certified orthopedic surgeon, for a second-opinion evaluation regarding appellant's entitlement to attendant services.

In a September 28, 2020 report, Dr. Welborn noted his review of the SOAF and the medical record. He indicated that appellant related to him that he did not wash dishes because of pain when standing, had pain with sitting, needed assistance getting dressed, had difficulty reaching his feet to put on shoes, could drive a car, could urinate and have a bowel movement, could not bathe himself, could get up from a chair easily, and could go outdoors alone. Dr. Welborn performed a physical examination of the lumbar spine and observed limited range of motion (ROM), negative straight leg raise testing, normal toe and heel walking, intact sensation, normal reflexes, and no atrophy of the calf or thigh. He diagnosed lumbar degenerative disc disease and sprain of the joints and ligaments of the neck. Dr. Welborn opined that appellant did not need attendant services for feeding, dressing, or bathing.

On October 27, 2020 OWCP provided Dr. Abeles with Dr. Welborn's September 28, 2020 report and requested that he provide a supplemental opinion.

In a November 5, 2020 narrative report, Dr. Abeles indicated that he disagreed with Dr. Welborn's assessment. He noted that appellant's ROM and strength were more limited than Dr. Welborn had reported and that appellant used a walker. Dr. Abeles opined that he needed attendant services for seven hours per day, seven days per week, to assist with feeding, bathing, dressing, and getting in and out of the house.

In a March 29, 2021 notice, OWCP advised appellant that it proposed to terminate his entitlement to attendant services based on the opinions of Drs. Bronshvag and Welborn. It afforded appellant 30 days to submit additional evidence or argument, if he disagreed with the proposed termination.

OWCP subsequently received medical reports dated February 12 through April 9, 2021 wherein Dr. Ramesh Singa, a Board-certified anesthesiologist and pain medicine specialist, noted that appellant could not ambulate without the help of a walker. Dr. Singa recommended attendant services for seven hours per day, seven days per week, to assist him with activities of daily living and dispensing medication.

In a report dated April 15, 2021, Dr. Abeles noted that appellant continued to have limited spinal motion and weakness in both legs and that he was unable to reach his backside or clean himself. He opined that he required attendant services for seven hours per day, seven days per week for assistance with bathing, dressing, using the bathroom, cooking, cleaning, and doing laundry.

On April 28, 2021 Dr. Sussman indicated that appellant required attendant services, including basic hygiene and help dispensing medication. He noted that depression and anxiety diminished his memory and judgement.

By decision dated June 10, 2021, OWCP finalized the proposed termination of appellant's entitlement to attendant services, effective June 10, 2021.

OWCP continued to receive evidence. In reports dated May 13, 2021 through April 14, 2022, Dr. Abeles opined that appellant developed an auto fusion of the thoracic and lumbar areas of the spine, which significantly limited his ROM and prevented him from performing activities of daily living. He noted that he was unable to get dressed, bend down to clean his feet, twist his back to perform custodial care for himself, and was incontinent of bowel requiring cleaning three to four times per day. Dr. Abeles opined that appellant required attendant services for seven hours per day, seven days per week.

In reports dated June 28 and July 19, 2021, Dr. Sussman continued to recommend attendant services including basic hygiene and help dispensing medication.

In medical reports dated August 4, 2021 through March 14, 2022 and September 1, 2021 through April 11, 2022, Dr. Ravi Panjabi, a Board-certified anesthesiologist, and Dr. Evan Collier, a Board-certified family practitioner, respectively, opined that appellant developed auto fusion of the thoracic and lumbar spine and required a caregiver.

On June 3, 2022 appellant requested reconsideration of OWCP's June 10, 2021 decision.

On June 10, 2022 OWCP determined that a conflict existed between Dr. Bronshvag, the neurological second opinion physician, and Dr. Abeles, appellant's attending physician, regarding appellant's entitlement to an attendant allowance. It referred him, together with a SOAF and the medical record, to Dr. David Broderick, a Board-certified orthopedic surgeon serving at the impartial medical examiner (IME), to resolve the conflict in the medical opinion evidence.

In a February 18, 2023 report, Dr. Broderick, serving as the IME, noted appellant's history of injury, medical treatment, and physical examination findings. He diagnosed chronic lumbosacral strain, history of prior lumbar disc herniation and surgery, and diffuse idiopathic skeletal hyperostosis (non-industrial). Dr. Broderick indicated that appellant had significant flexion contracture of his spine and used a walker for ambulation but was able to stand unassisted without a walker. He opined that he did not require attendant services from an orthopedic standpoint but that his medical condition precluded him from performing his time-of-injury position.

OWCP also received reports by Dr. Abeles dated May 11 through December 8, 2022 and Dr. Collier dated July 5, 2022 through January 3, 2023, who continued to opine that appellant required attendant services for seven hours per day, seven days per week.

By decision dated March 8, 2023, OWCP denied modification of the June 10, 2021 decision.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify modification or termination of an employee's benefits.⁴ It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment injury.⁵ OWCP's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.⁷ To terminate authorization for medical treatment, OWCP must establish that the employee no longer has residuals of an employment-related condition that require further medical treatment.⁸ 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 who shall make an examination."⁹ In situations where 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.¹⁰

ANALYSIS -- ISSUE 1

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's entitlement to attendant services, effective June 10, 2021.

In an April 28, 2020 report, Dr. Bronshvag reviewed appellant's history of injury, noted the accepted conditions, and observed normal neurological examination findings. He recommended further evaluation by an orthopedic surgeon and an FCE to determine the necessity of attendant services. In a supplemental report dated July 9, 2020, Dr. Bronshvag reviewed the FCE and opined that appellant did not have a neurological need for attendant services. In a September 28, 2020 report, Dr. Welborn diagnosed lumbar degenerative disc disease and sprain

⁴ *M.S.*, Docket No. 21-1251 (issued March 8, 2022); *S.P.*, Docket No. 19-0196 (issued June 24, 2020); *D.G.*, Docket No. 19-1259 (issued January 29, 2020); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁵ *A.T.*, Docket No. 20-0334 (issued October 8, 2020); *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

⁶ *C.R.*, Docket No. 19-1132 (issued October 1, 2020); *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁷ *E.J.*, Docket No. 20-0013 (issued November 19, 2020); *L.W.*, Docket No. 18-1372 (issued February 27, 2019).

⁸ *A.J.*, Docket No. 18-1230 (issued June 8, 2020); *L.S.*, Docket No. 19-0959 (issued September 24, 2019); *R.P.*, Docket No. 18-0900 (issued February 5, 2019).

⁹ 5 U.S.C. § 8123(a).

¹⁰ See *J.P.*, Docket No. 23-0075 (issued March 26, 2023); *C.M.*, Docket No. 20-1647 (issued October 5, 2021); *James P. Roberts*, 31 ECAB 1010 (1980).

of the joints and ligaments of the neck. He opined that appellant did not need attendant services for feeding, dressing, or bathing.

Dr. Abeles, in his report November 5, 2020 disagreed with Dr. Welborn's assessment. He noted that appellant's ROM and strength were more limited than Dr. Welborn had reported and that appellant used a walker. Dr. Abeles opined that he needed attendant services for seven hours per day, seven days per week, to assist with feeding, bathing, dressing, and getting in and out of the house.

As explained above, if there is a disagreement between an employee's physician and an OWCP referral physician, OWCP will appoint an IME who shall make an examination.¹¹ The Board finds that a conflict in medical opinion existed between Dr. Abeles and Drs. Welborn and Bronshvag as of June 10, 2021, the date it terminated appellant's entitlement to attendant services. Thus, the Board finds that OWCP failed to meet its burden of proof.

CONCLUSION

The Board finds that OWCP failed to meet its burden of proof in terminating appellant's entitlement to attendant services, effective June 10, 2021.¹²

ORDER

IT IS HEREBY ORDERED THAT the March 8, 2023 decision of the Office of Workers' Compensation Programs is reversed.

Issued: April 1, 2026
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

¹¹ *Id.*

¹² In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.