

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

S.S., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
TOMAH VA MEDICAL CENTER,
Tomah, WI, Employer**

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**Docket No. 26-0526
Issued: August 26, 2026**

Appearances:

*Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 18, 2026 appellant, through counsel, filed a timely appeal from a May 4, 2026 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.

ISSUES

The issues are: (1) whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective December 12, 2025, as he no longer had disability or residuals causally related to his accepted July 11, 2013 employment injury; and

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.*

(2) whether appellant has met his burden of proof to establish continuing disability or residuals on or after December 12, 2025 causally related to the accepted July 11, 2013 employment injury.

FACTUAL HISTORY

On July 18, 2013 appellant, then a 47-year-old nursing assistant, filed a traumatic injury claim (Form CA-1) alleging that he injured his left knee on July 11, 2013 while in the performance of duty. He recounted that he turned to speak to a coworker, twisted his knee, and felt a pop. Appellant did not initially stop work. OWCP accepted the claim for unspecified internal derangement of the left knee.

A magnetic resonance imaging (MRI) scan dated August 15, 2013 demonstrated meniscal degeneration, effusion, and a Baker's cyst.

On February 18, 2014 appellant underwent OWCP-authorized surgery to the left knee by Dr. Wallace B. Brucker, a Board-certified orthopedic surgeon, including arthroscopic resection of fat pad. Dr. Brucker's postoperative diagnosis was anterior redundant infrapatellar fat pad. OWCP paid appellant wage-loss compensation on the supplemental rolls effective February 4, 2014.

In a March 4, 2015 medical report, Dr. Bradley L. Fowler, a Board-certified orthopedic surgeon and sports medicine specialist, diagnosed patellofemoral pain and released appellant to return to full-time medium to heavy-duty work with restrictions on crawling, squatting, bending, twisting, and climbing. He indicated that the restrictions were permanent.

On August 24, 2015 appellant accepted an offer of a permanent full-time position as a medical support assistant.³

On June 24, 2025 OWCP referred appellant, the medical record, a statement of accepted facts (SOAF), and a series of questions to Dr. Thomas O'Brien, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine the nature and extent of appellant's employment-related injury.

In a July 7, 2025 report, Dr. O'Brien reviewed the SOAF and medical record and noted appellant's complaints of anterolateral left knee pain. He also noted that appellant had recently undergone arthroscopic surgery on the left knee by Dr. Brent D. Carlson, a Board-certified orthopedic surgeon. Dr. O'Brien performed a physical examination and observed tenderness to palpation over the medial patella, mild joint line tenderness, a small Baker's cyst, and pain with McMurray's test. He also observed a normal gait, no effusion or atrophy, normal range of motion and strength, and no instability. Dr. O'Brien diagnosed "a minor left knee sprain/capsular strain," and indicated that appellant "did not sustain an intra-articular injury to the ligaments, menisci, or fat pad." He opined that the employment-related left knee condition had resolved and that he was able to perform his date-of-injury job as a nursing assistant. Dr. O'Brien related that no further medical treatment was required for appellant's employment-related left knee injury and indicated

³ By decision dated December 3, 2015, OWCP issued a retroactive loss of wage-earning capacity determination, finding that appellant's position beginning August 24, 2015 fairly and reasonably represented his wage-earning capacity. OWCP paid wage-loss compensation for loss of wage-earning capacity on the supplemental rolls effective July 20, 2015, and on the periodic rolls effective October 18, 2015. An April 20, 2020 notification of personnel action (Standard Form (SF) 50) indicated that appellant resigned from federal service for medical reasons effective that date.

that the recent arthroscopic surgery was not medically reasonable or necessary to treat appellant's left knee condition. He opined that the procedure was carried out to address preexisting age-related arthritis due to appellant's age, obesity, and decades of heavy tobacco use. Dr. O'Brien found that appellant reached maximum medical improvement (MMI) by May 18, 2024, three months after the surgery by Dr. Brucker, and that he reached "end of healing and a healing plateau" as of July 7, 2025, the date of his examination.

In a notice dated August 28, 2025, OWCP advised appellant that it proposed to terminate his wage-loss compensation and medical benefits based on Dr. O'Brien's opinion that the accepted employment-related condition had ceased without residuals or disability. It afforded him 30 days to submit additional evidence or argument challenging the proposed termination.

In a September 4, 2025 narrative report, Dr. Carlson noted that on January 15, 2025 appellant related complaints of left knee pain, locking, and instability and, on physical examination, he observed tenderness to palpation over the medial joint line and discomfort with McMurray's maneuver in the left knee. He obtained an updated MRI of the left knee, which demonstrated a medial meniscus intrasubstance tear through all three zones. Dr. Carlson diagnosed left knee medial meniscus intrasubstance tear and, on May 22, 2025, he performed arthroscopic surgery. During two postoperative follow-up visits, appellant related an improvement in his mechanical symptoms. Dr. Carlson disagreed with Dr. O'Brien's conclusions, noting that Dr. O'Brien incorrectly described the recent surgery as an abrasion chondroplasty. He also noted that appellant had life-altering pain and mechanical symptoms, had failed conservative treatment, and that Dr. O'Brien had not reviewed any of his treatment records.

By decision dated December 12, 2025, OWCP terminated appellant's wage-loss compensation and medical benefits, effective that date, finding that Dr. O'Brien's opinion constituted the weight of the medical opinion evidence that appellant no longer had residuals or disability causally related to the accepted July 11, 2013 employment injury.

On December 22, 2025 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on March 31, 2026.

OWCP subsequently received medical reports by Dr. Carlson dated January 15, February 19, June 4, and July 8, 2025. It also received a May 22, 2025 operative report, in which Dr. Carlson performed arthroscopic surgery on appellant's left knee, including a partial meniscectomy. His postoperative diagnosis was medial meniscus tear.

By decision dated May 4, 2026, an OWCP hearing representative affirmed the December 12, 2025 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.⁴ After it has determined that an employee

⁴ See *D.D.*, Docket No. 24-0201 (issued April 23, 2024); *T.C.*, Docket No. 19-1383 (issued March 27, 2020); *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005).

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.⁵ Its burden of proof 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 for disability compensation.⁷ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁸

ANALYSIS -- ISSUE 1

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's entitlement to wage-loss compensation and medical benefits, effective December 12, 2025.

OWCP referred appellant, the medical record, a SOAF, and a series of questions to Dr. O'Brien for a second opinion evaluation to determine the nature and extent of appellant's employment-related injury. On examination he observed anterolateral left knee pain, tenderness to palpation over the medial patella, mild joint line tenderness, and a small Baker's cyst. Dr. O'Brien related that no further medical treatment was required for appellant's employment-related left knee injury and indicated that the recent arthroscopic surgery was not medically reasonable or necessary to treat appellant's left knee condition. He attributed the May 22, 2025 arthroscopic surgery to preexisting age-related arthritis; however, his opinion was conclusory in nature as it lacked rationale. The Board has held that a medical report is of limited probative value if it contains a conclusion which is unsupported by sufficient medical rationale.⁹

The Board, therefore, finds that the opinion of Dr. O'Brien is not of sufficient probative value to constitute the weight of the medical opinion evidence regarding whether appellant continued to have residuals or disability causally related to his July 11, 2013 employment injury.¹⁰ Accordingly, the Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective December 12, 2025.¹¹

⁵ See *D.D., 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).

⁶ *D.D., 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).

⁷ *D.D., id.; A.G.*, Docket No. 19-0220 (issued August 1, 2019); *A.P.*, Docket No. 08-1822 (issued August 5, 2009); *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁸ *D.D., id.; K.W., supra* note 6; see *A.G., id.; James F. Weikel*, 54 ECAB 660 (2003).

⁹ *J.F.*, Docket No. 26-0068 (issued February 24, 2026); *N.R.*, Docket No. 25-0861 (issued December 23, 2025); *C.G.*, Docket No. 23-0013 (issued April 24, 2023); *C.B.*, Docket No. 20-0629 (issued May 26, 2021); *A.G.*, Docket No. 20-0187 (issued December 31, 2020); see *J.W.*, Docket No. 19-1014 (issued October 24, 2019); *S.W.*, Docket No. 18-0005 (issued May 24, 2018).

¹⁰ See *J.R.*, Docket No. 26-0393 (issued July 7, 2026); *V.D.*, Docket No. 26-0229 (issued May 5, 2026).

¹¹ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

CONCLUSION

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective December 12, 2025.

ORDER

IT IS HEREBY ORDERED THAT the May 4, 2026 decision of the Office of Workers' Compensation Programs is reversed.

Issued: August 26, 2026
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