

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

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K.Y., Appellant)	
)	
and)	Docket No. 26-0070
)	Issued: February 24, 2026
U.S. POSTAL SERVICE, DOMINICK V.)	
DANIELS PROCESSING AND DISTRIBUTION)	
CENTER, Edison, NJ, Employer)	
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Appearances:
Michael D. Overman, 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 November 4, 2025 appellant, through counsel, filed a timely appeal from a May 19, 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.*

ISSUES

The issues are: (1) whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective November 21, 2024, as she no longer had residuals or disability causally related to her accepted February 5, 2016 employment injury; and (2) whether appellant has met her burden of proof to establish continuing disability or residuals on or after November 21, 2024 causally related to her accepted February 5, 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 decision are incorporated herein by reference. The relevant facts are as follows.

On February 5, 2016 appellant, then a 49-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that she sustained injury on that date when she slipped and fell on ice when walking in a parking lot while in the performance of duty. She stopped work on the date of injury. OWCP accepted appellant's claim for right arm contusion; labral lesion and rotator cuff tendinitis of the right shoulder; labral tear and rotator cuff tendinosis of the left shoulder; and lumbar radiculopathy. It paid her wage-loss compensation for disability from work on the supplemental rolls, effective March 22, 2016, and on the periodic rolls, effective June 26, 2016.

On September 1, 2016 Dr. Richard A. Boiardo, a Board-certified orthopedic surgeon, performed OWCP-authorized left shoulder surgery, including arthroscopic labral repair, repair of superior labrum anterior to posterior (SLAP) lesion, arthrotomy, partial distal claviclectomy, arthroscopic partial acromioplasty, and arthroscopic lysis of adhesions with debridement of the subacromial space and partial bursectomy. In his September 1, 2016 report, Dr. Boiardo identified appellant's postoperative diagnoses of the left shoulder as complete tear of the glenoid labrum extending anterior to posterior to the root of the biceps tendon (type 2 SLAP lesion), acromioclavicular joint arthropathy, subacromial spur, and adhesions and bursitis in the subacromial space.

By decision dated September 6, 2017, OWCP terminated appellant's wage-loss compensation and entitlement to a schedule award, effective that date, because she refused an offer of suitable work, pursuant to 5 U.S.C. § 8106(c)(2). It upheld its termination action in decisions dated May 14, 2018 and January 29, 2019.

Appellant, through counsel, appealed to the Board. By decision dated November 14, 2019,⁴ the Board reversed OWCP's January 29, 2019 termination decision, finding that OWCP had not met its burden of proof to establish that the position it offered appellant was suitable. OWCP then reinstated her entitlement to wage-loss compensation and medical benefits.

³ Docket No. 19-1079 (issued November 14, 2019).

⁴ *Id.*

On July 26, 2021 Dr. Boiardo performed OWCP-authorized right shoulder surgery, including arthroscopic labral repair, arthroscopic intra-articular biceps tenodesis, arthroscopic partial distal claviclectomy, arthroscopic acromioplasty, and arthroscopic debridement and lysis of adhesions with partial bursectomy of the subacromial space. In his July 26, 2021 surgery report, he identified his operative findings of the right shoulder as labral tear extending anteriorly to posteriorly to the root of the biceps tendon, arthroscopic partial distal claviclectomy, arthroscopic acromioplasty, arthroscopic debridement, lysis of adhesions, and excision of bursa in the subacromial space.

In an October 12, 2021 report, Dr. Boiardo discussed appellant's 2016 and 2021 shoulder surgeries and diagnosed post arthroscopy of the right shoulder. He opined that her shoulder pathology was a "direct and [causal] result" of the accepted February 5, 2016 employment injury.

In a March 1, 2022 attending physician's report (Form CA-20), Dr. Boiardo listed February 5, 2016 as the date of injury, diagnosed status post right shoulder arthroscopy and status post left shoulder arthroscopy, and checked a "Yes" box indicating that the diagnosed conditions were caused or aggravated by the employment activity. He opined that appellant was totally disabled.

On July 8, 2022 OWCP referred appellant, along with the medical record, a statement of accepted facts (SOAF), and a series of questions, for a second opinion examination and evaluation regarding continuing injury-related residuals/disability with Dr. Frank J. Corrigan, a Board-certified orthopedic surgeon.

In an August 25, 2022 report, Dr. Corrigan discussed appellant's factual and medical history, noting her history of labral/SLAP lesion repair surgery of the left shoulder in 2016 and labral repair surgery of the right shoulder in 2021. He reported the findings of his physical examination, including range of motion (ROM) testing of the shoulders. Dr. Corrigan indicated that appellant exhibited decreased ROM in her shoulders and complained of bilateral shoulder pain, but noted that these were subjective findings as her loss of ROM was voluntary and that the bilateral shoulder examination revealed no signs of impingement or rotator cuff pathology. He further advised that appellant did not exhibit findings on examination which were consistent with lumbar radiculopathy. Dr. Corrigan opined that appellant's accepted conditions related to the February 5, 2016 employment injury had resolved. He further opined that, relating to the February 5, 2016 employment injury, appellant could participate in all occupational duties on a full-time basis without restrictions. Dr. Corrigan determined that her preexisting degenerative considerations prevented her from performing her date-of-injury job, but that she could perform sedentary work. In an August 25, 2022 work capacity evaluation (Form OWCP-5c), he indicated that appellant could not perform her usual job without restrictions, but could work eight hours per day in a sedentary position.

In an August 23, 2022 report, Dr. Boiardo discussed appellant's 2016 and 2021 shoulder surgeries, and noted that she reported during a November 19, 2021 visit that she had experienced intermittent pain in her right shoulder. He diagnosed post arthroscopy of the right shoulder.

In a notice dated February 23, 2023, OWCP informed appellant that it proposed to terminate her wage-loss compensation and medical benefits as she no longer had residuals or

disability causally related to her accepted February 5, 2016 employment injury. It found that the weight of the medical opinion evidence regarding work-related residuals/disability rested with the opinion of Dr. Corrigan, the OWCP referral physician. OWCP afforded appellant 30 days to submit additional evidence and argument.

In an April 14, 2023 letter, counsel argued, on appellant's behalf, that the opinion of Dr. Corrigan was not sufficiently well rationalized to serve as the basis to terminate appellant's wage-loss compensation and medical benefits.

In an April 27, 2023 medical conflict memorandum, OWCP indicated that it had determined that there was a conflict in the medical opinion evidence between Dr. Corrigan and Dr. Boiardo regarding whether appellant continued to have residuals and disability causally related to her accepted February 5, 2016 employment injury. On July 7, 2023 it referred appellant, along with the medical record, an SOAF, and a series of questions, to Dr. Howard M. Pecker, a Board-certified orthopedic surgeon for an impartial medical examination and evaluation regarding continuing injury-related residuals/disability.

In a November 30, 2023 report, Dr. Pecker, serving as the impartial medical examiner (IME) discussed appellant's factual and medical history, noting that appellant reported that she underwent rotator repair surgery of her left shoulder in 2016 and rotator cuff repair surgery of her right shoulder in 2020. He indicated that appellant reported pain and tightness in both shoulders, wrists, and hands, on the right side more than the left, and that she experienced low back pain when she sat more than 45 minutes. In the records review section of his report, Dr. Pecker referenced a September 1, 2016 report regarding Dr. Boiardo's performance on that date of left shoulder surgery, including arthroscopic labral repair, repair of SLAP lesion, partial distal claviclectomy, and lysis of adhesions with debridement. In this section, he also referenced a July 26, 2021 report regarding Dr. Boiardo's performance on that date of right shoulder surgery, including arthroscopic labral repair, biceps tenodesis, distal claviclectomy, acromioplasty, and lysis of adhesions with debridement. Dr. Pecker reported the findings of his physical examination, including the results of ROM testing of both shoulders, elbows, and wrists, as well as of the lumbar spine. Appellant reported pain in her right shoulder at the extreme of forward elevation and tenderness to light palpation of the right deltoid muscles laterally and posteriorly. Dr. Pecker noted that appellant's lumbar spine was nontender and that she had intact sensation of the lower extremities upon pin prick testing.

Dr. Pecker indicated that, based on history, physical documentation, and document review, appellant's diagnosis was glenohumeral arthritis of both shoulders with senescent, chronic, and preexisting degenerative tearing. He advised that he had reviewed the reports of Dr. Boiardo and Dr. Corrigan and opined that appellant's bilateral shoulder condition was preexisting and due to the natural progression of degenerative disease and the aging process. Dr. Pecker found that appellant's nonwork-related degenerative bilateral shoulder condition prevented her from performing her date-of-injury job and limited her to performing sedentary work. He stated, "There is nothing to contraindicate initial sprain or strain but there is no evidence that the work-related conditions are still present." Dr. Pecker indicated that the "work-related conditions have resolved" and that they "are not still active and are not causing objective findings." He noted that the rationale for his opinion was that arthritic changes of the glenohumeral joint with chronic senescent labral tears occurred gradually over time and could not be found to "occur suddenly secondary to

trauma of any kind. Dr. Pecker advised that appellant had reached maximum medical improvement. He stated, “The [SOAF] notes the contusion of the right arm was the accepted medical condition. There is no evidence of this condition on today’s examination and, as such, it has resolved.”

In a January 24, 2024 letter, counsel argued, on appellant’s behalf, that the opinion of Dr. Pecker, the IME, was not sufficiently well rationalized to serve as the basis to terminate appellant’s wage-loss compensation and medical benefits.

In a notice dated August 12, 2024, OWCP informed appellant that it proposed to terminate her wage-loss compensation and medical benefits as she no longer had residuals or disability causally related to her accepted February 5, 2016 employment injury. It found that the weight of the medical opinion evidence regarding work-related residuals/disability rested with the opinion of Dr. Pecker, the IME. OWCP afforded appellant 30 days to submit additional evidence and argument.

Appellant submitted an August 22, 2024 report wherein Dr. Boiardo expressed his disagreement with Dr. Pecker’s opinion that appellant ceased to have residuals or disability causally related to her accepted February 5, 2016 employment injury. Dr. Boiardo argued that Dr. Pecker based his opinion on an incomplete and inaccurate factual and medical history. Dr. Boiardo asserted that Dr. Pecker mischaracterized the nature of appellant’s 2016 and 2021 shoulder surgeries.

On September 11, 2024 OWCP requested that Dr. Pecker provide a supplemental report clarifying his November 30, 2023 opinion, particularly with regard to his understanding of the nature of appellant’s 2016 and 2021 shoulder surgeries.

In a September 16, 2024 supplemental report, Pecker indicated that, although he provided appellant’s statement of having undergone rotator cuff repairs, appellant’s reported history was not a statement of fact but was simply how she remembered her treatment. He asserted that he understood, as clearly demonstrated by his review of the relevant documents in his November 30, 2023 report, that appellant did not have rotator cuff repairs but rather had labral repairs as described in his summary which included both the 2016 and 2021 operative reports. Dr. Pecker indicated that he did not base his opinion on appellant’s history as he was clearly aware that her understanding of the procedures that had been performed on her was erroneous. He advised that, in his November 30, 2023 report, he discussed findings consistent with glenohumeral arthritis of both shoulders with chronic, preexisting degenerative labral tearing, which were findings that did not “include rotator cuff tears or repairs.” Dr. Pecker indicated that he was fully aware of the actual pathology noted by Dr. Boiardo in his operative reports and was further informed of this pathology by other documentation and his observations on physical examination. He noted that he was not changing or altering the opinion “as stated in my initial IME [report] of November 30, 2023.”

By decision dated November 21, 2024, OWCP terminated appellant’s wage-loss compensation and medical benefits, effective that date, as she no longer had residuals or disability causally related to her accepted February 5, 2016 employment injury. It found that the special

weight of the medical opinion evidence regarding continuing work-related residuals/ disability rested with the opinion of Dr. Pecker, the IME.

On December 2, 2024 appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on March 4, 2025. Appellant subsequently submitted additional medical evidence, including a March 31, 2025 report wherein Dr. Kevin K. Nahigian, a Board-certified orthopedic surgeon, diagnosed impingement syndrome of both shoulder regions; diagnostic testing from April 2025; and a May 9, 2025 functional capacity evaluation.

By decision dated May 19, 2025, OWCP's hearing representative affirmed the November 21, 2024 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.⁵ After it has determined that, an employee has a disability causally related to his or her employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.⁶ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁷ The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁸ To terminate authorization for medical treatment, OWCP must establish that the employee no longer has residuals of an employment-related condition, which would require further medical treatment.⁹

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 appoint a third physician (known as a referee physician or IME) who shall make an examination.¹⁰ For a conflict to arise, the opposing physicians' opinions must be of virtually equal weight and rationale.¹¹ In situations where the case is properly referred to an IME for the purpose of resolving

⁵ *Z.D.*, Docket No. 19-0662 (issued December 5, 2019); *see 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).

⁶ *See R.P., id.*; *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

⁷ *See P.T.*, Docket No. 21-0328 (issued May 2, 2022); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁸ *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005); *A.P.*, Docket No. 08-1822 (issued August 5, 2009). *See also Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁹ *T.C.*, Docket No. 20-1163 (issued July 13, 2021); *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002); *Furman G. Peake, id.*

¹⁰ 5 U.S.C. § 8123(a); *see E.L.*, Docket No. 20-0944 (issued August 30, 2021); *R.S.*, Docket No. 10-1704 (issued May 13, 2011); *S.T.*, Docket No. 08-1675 (issued May 4, 2009); *M.S.*, 58 ECAB 328 (2007).

¹¹ *P.R.*, Docket No. 18-0022 (issued April 9, 2018).

the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.¹²

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 November 21, 2024.

OWCP determined that there was a conflict in the medical opinion evidence between Dr. Boiardo, appellant's attending physician, and Dr. Corrigan, the OWCP referral physician, on the issue of whether appellant continued to have residuals and disability causally related to the accepted February 5, 2016 employment injury. In order to resolve the conflict, it properly referred appellant to Dr. Pecker for an impartial medical examination and an opinion on the matter, pursuant to section 8123(a) of FECA.¹³

In his November 30, 2023 report, Dr. Pecker reported the findings of his physical examination and indicated that, based on history, physical documentation, and document review, appellant's diagnosis was glenohumeral arthritis of both shoulders with senescent, chronic, and preexisting degenerative tearing. He opined that appellant's bilateral shoulder condition was preexisting and due to the natural progression of degenerative disease and the aging process. Dr. Pecker further opined that appellant's nonwork-related degenerative bilateral shoulder condition prevented her from performing her date-of-injury job and limited her to performing sedentary work. He stated, "There is nothing to contraindicate initial sprain or strain but there is no evidence that the work-related conditions are still present." Dr. Pecker noted that the "work-related conditions have resolved" and that they "are not still active and are not causing objective findings." He indicated that the rationale for his opinion was that arthritic changes of the glenohumeral joint with chronic senescent labral tears occurred gradually over time and could not be found to "occur suddenly secondary to trauma of any kind." Dr. Pecker stated, "The [SOAF] notes the contusion of the right arm was the accepted medical condition. There is no evidence of this condition on today's examination and, as such, it has resolved."

In a September 16, 2024 supplemental report, Dr. Pecker indicated that, although he provided appellant's statement of having undergone rotator cuff repairs, appellant's reported history was not a statement of fact but was simply how she remembered her treatment. He asserted that he understood, as clearly demonstrated by his review of the relevant records in his November 30, 2023 report, that appellant did not have rotator cuff repairs but rather had labral repairs as described in his summary which included both the 2016 and 2021 operative reports. Dr. Pecker advised that, in his November 30, 2023 report, he discussed findings consistent with glenohumeral arthritis of both shoulders with senescent, chronic, and preexisting degenerative labral tearing, which were findings that did not "include rotator cuff tears or repairs." He indicated

¹² See *D.M.*, Docket No. 18-0746 (issued November 26, 2018); *R.H.*, 59 ECAB 382 (2008); *James P. Roberts*, 31 ECAB 1010 (1980).

¹³ See *supra* notes 10 through 12.

that he was not changing or altering the opinion “as stated in my initial IME [report] of November 30, 2023.”

OWCP based its termination of appellant’s wage-loss compensation and medical benefits, effective November 21, 2024, on the November 30, 2023 and September 16, 2024 reports of Dr. Pecker. In his November 30, 2023 report, Dr. Pecker provided an opinion on continuing residuals/disability that was not fully in keeping with the SOAF that OWCP provided him to use as a frame of reference in forming his opinion. The SOAF made clear that OWCP had accepted appellant’s claim for right arm contusion; labral lesion and rotator cuff tendinitis of the right shoulder; labral tear and rotator cuff tendinosis of the left shoulder; and lumbar radiculopathy. In his November 30, 2023 report, Dr. Pecker only acknowledged that appellant’s claim was accepted for contusion of the right arm. In his September 16, 2024 supplemental report, he did not clearly address appellant’s accepted conditions. Thus, Dr. Pecker failed to acknowledge that appellant’s claim had also been accepted for labral lesion and rotator cuff tendinitis of the right shoulder; labral tear and rotator cuff tendinosis of the left shoulder; and lumbar radiculopathy.

The Board has held that the findings of an OWCP referral physician or IME must be based on the factual underpinnings of the claim, as set forth in the SOAF.¹⁴ OWCP’s procedures provide that when an OWCP referral physician, IME, or district medical adviser renders a medical opinion that 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.¹⁵

Given his failure to acknowledge and adequately address all the accepted employment conditions, Dr. Pecker’s opinion on whether appellant continued to have residuals/disability causally related to her accepted work-related conditions is of limited probative value.¹⁶ Although he noted in a conclusory manner that appellant’s accepted right arm contusion had resolved, and he provided a general opinion that appellant no longer had work-related residuals/disability, he failed to provide a well-rationalized medical opinion explaining how she ceased to have residuals and disability related to all of her accepted conditions, *i.e.*, right arm contusion; labral lesion and rotator cuff tendinitis of the right shoulder; labral tear and rotator cuff tendinosis of the left shoulder; and lumbar radiculopathy.¹⁷

The Board finds that the opinion of Dr. Pecker does not have sufficient probative value to resolve the conflict in the medical opinion evidence regarding whether appellant continued to have residuals or disability causally related to her accepted February 5, 2016 employment injury. Therefore, the Board finds that OWCP failed to meet its burden of proof to terminate appellant’s wage-loss compensation and medical benefits, effective November 21, 2024.

¹⁴ See *A.D.*, Docket No. 20-0553 (issued April 19, 2021).

¹⁵ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3a(10) (October 1990).

¹⁶ See *supra* notes 14 and 15.

¹⁷ See *supra* note 7. See also *C.E.*, Docket No. 19-0192 (issued July 16, 2019).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the May 19, 2025 decision of the Office of Workers' Compensation Programs is reversed.¹⁸

Issued: February 24, 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

¹⁸ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.