United States Department of Labor
Employees' Compensation Appeals Board

T.G., Appellant	)	
and	)	**Docket No. 24-0803**
	)	**Issued: July 24, 2026**
U.S. POSTAL SERVICE, POST OFFICE, Martinez, CA, Employer	)	

Appearances:
Aaron Aumiller, Esq., for the appellant[1]
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 August 1, 2024, appellant, through counsel, filed a timely appeal from a February 26, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (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 June 17, 2021, as she no longer had disability

[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*.

or residuals causally related to her accepted May 25, 2017 employment injury; (2) whether appellant has met her burden of proof to establish continuing disability or residuals on or after June 17, 2021 causally related to the accepted employment injury.

FACTUAL HISTORY

On June 2, 2017, appellant, then a 51-year-old carrier technician, filed an occupational disease claim (Form CA-2) alleging that she developed right shoulder and neck conditions due to factors of her federal employment, including repetitive right upper extremity movements while casing mail, lifting boxes, and reaching to placing mail in slots. She stopped work on May 25, 2017. OWCP accepted the claim for strain unspecified muscle, fascia tendon of the right shoulder, upper arm, and other specified disorders of the right shoulder tendon. It paid her wage-loss compensation on the supplemental rolls effective May 25, 2017, and on the periodic rolls effective August 20, 2017.

OWCP received medical reports dated February 4 and March 3 and 30, 2021 from Dr. Vatche Cabayan, an attending orthopedist. Dr. Cabayan recounted appellant's history of medical treatment and noted her current complaints of neck and right arm, wrist, and shoulder pain, neck numbness, and arm tingling. He related diagnoses of right shoulder impingement, rotator cuff strain, bicipital tendinitis with frozen shoulder, right elbow sprain, left shoulder impingement syndrome, bilateral CMC thumb joint inflammation, cervical discogenic disease, and bilateral carpal tunnel syndrome. In his February 4, 2021 report, Dr. Cabayan indicated that appellant could remain off work. In reports dated March 3 and 30, 2021, he noted appellant's treatment plan and restricted her to left arm work only.

On February 8, 2021, OWCP referred appellant, along with the medical record, a statement of accepted facts (SOAF), and a series of questions, to Dr. John H. Welborn, Jr., a Board-certified orthopedic surgeon, for a second opinion examination to determine whether appellant continued to have residuals or disability causally related to her accepted employment injury.

Dr. Welborn, in a March 24, 2021 report, related appellant's history of injury and noted his review of the SOAF and medical record. He reported his findings on examination, and assessed strain unspecified muscle, fascia tendon at shoulder, upper arm, right arm resolved, and stable right shoulder adhesive capsulitis. Dr. Welborn noted that appellant's physical examination indicated limited right shoulder motion, tenderness of the right suprascapular and trapezius, no swelling, and no erythema. However, he noted that he could not medically explain her loss of motion, and opined it was not a valid objective finding. Dr. Welborn therefore determined that appellant's work-related right shoulder strain and adhesive capsulitis had resolved, and no further treatment was required. He further opined that appellant's wrist and elbow pain, bilateral carpal tunnel syndrome, and degenerative right shoulder conditions were not work related. Dr. Welborn concluded that appellant could not perform her carrier tech position, which he attributed to nonwork related blood cell problem, sciatica, and difficulty walking, but found she was capable of performing sedentary work. In an accompanying work capacity evaluation (Form OWCP-5c) of even date, he reiterated that appellant was capable of working eight hours per day in a sedentary position. Dr. Welborn provided work restrictions of no pushing, pulling, or lifting more than 10 pounds.

By notice dated March 31, 2021, OWCP advised appellant that it proposed to terminate her wage-loss compensation and medical benefits based on Dr. Welborn's opinion that the accepted conditions had ceased without residuals, and that she was no longer disabled from work due to the accepted employment injury. It afforded her 30 days to submit additional evidence or argument challenging the proposed action.

In response, appellant submitted reports dated January 13, April 30, and June 8, 2021, wherein Dr. Cabayan reiterated his findings and opinions, including that appellant could only perform left-handed work.

In a May 17, 2021 supplemental report, Dr. Welborn opined that appellant's accepted right shoulder tendinosis and right shoulder strain had resolved. He related that no further medical treatment was required for her work-related shoulder injury. Dr. Welborn attributed appellant's continued right shoulder pain to degenerative changes, and indicated that her continued medical treatment was for neuropathic pain which was not work related.

By decision dated June 17, 2021, OWCP terminated appellant's wage-loss compensation and medical benefits, effective that date, finding that Dr. Welborn's opinion was entitled to the weight of the medical evidence.

Dr. Cabayan, in a June 22, 2021 report, noted his disagreement with Dr. Welborn. He reported that appellant had scarring and stiffness in her shoulder which he opined were residuals of her accepted shoulder condition and subsequent surgery. Dr. Cabayan contended that Dr. Welborn had not sufficiently explained how he arrived at a diagnosis of neuropathic pain. He further contended that, while Dr. Welborn opined that appellant had arthritis, her treatment was for neuropathic pain which was a totally separate condition.

On June 24, 2021, appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In a June 28, 2021 report, Dr. Cabayan indicated that appellant was seen in his office that day. In reports dated July 7 and August 5, 2021, he recounted appellant's medical history, reported her symptoms and complaints, reviewed diagnostic tests, and provided examination findings. Dr. Cabayan diagnosed right shoulder impingement, rotator cuff strain, bicipital tendinitis with frozen shoulder, right elbow sprain, left shoulder impingement syndrome, bilateral CMC thumb joint inflammation, cervical discogenic disease, and bilateral carpal tunnel syndrome. He detailed a treatment plan, and noted appellant could only perform work with her left arm.

In a July 22, 2021 attending physician's report (Form CA-20), Dr. Cabayan advised that appellant could return to her regular work with the restriction of working one-handed with her left arm. He also checked a box marked "No" in response to the question of whether the employee had been advised she could return to work.

Dr. Cabayan, in reports dated September 7, October 13, and November 10, 2021 diagnosed right shoulder impingement, rotator cuff strain, bicipital tendinitis with frozen shoulder, right elbow sprain, left shoulder impingement syndrome, bilateral carpometacarpal (CMC) thumb joint inflammation, cervical discogenic disease, and bilateral carpal tunnel syndrome. He reiterated that

appellant was capable of working with restrictions of only using her left arm and working one-handed.

A hearing was held on November 17, 2021.

By decision dated December 22, 2021, OWCP's hearing representative affirmed the June 17, 2021 decision in part, finding that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits as she no longer had disability or residuals, as of that date, causally related to the accepted employment injury. The hearing representative, however, set aside the June 17, 2021 decision in part, finding that the evidence submitted following the June 17, 2021 decision demonstrated a conflict in the medical opinion evidence between Dr. Cabayan and Dr. Welborn as to whether appellant continued to have residuals or disability on or after June 17, 2021 causally related to the accepted employment injury. The hearing representative remanded the case for an impartial medical examination, followed by a *de novo* decision.

On April 22, 2022, OWCP referred appellant, together with the medical record, SOAF, and series of questions, to Dr. Benjamin Busfield, a Board-certified orthopedic surgeon, to resolve the conflict in the medical opinion evidence between Dr. Cabayan and Dr. Welborn as to whether appellant continued to have residuals and disability causally related to the accepted May 25, 2017 employment injury.

OWCP continued to receive reports dated April 28, June 24, July 26, 2022 from Dr. Cabayan, which related unchanged findings.

In a report dated June 16, 2022, Dr. Busfield, serving as the impartial medical examiner (IME), noted his review of the SOAF and medical record. On examination he reported limited right shoulder range of motion (ROM), limited neck ROM, +1 upper extremity reflexes, 4/5 grip strength, decreased right upper trapezius decreased sensation, and decrease right axillary patch sensation. Dr. Busfield related that appellant cried uncontrollably during his examination, gave poor effort, and he had to use her left arm to lift her right arm for passive motion. He agreed with Dr. Welborn that appellant clearly had neuropathic pain. Dr. Busfield diagnosed status post right shoulder labral repair, acromioplasty, and synovectomy with no stiffness. He contended that appellant's diagnosis of right shoulder tendinosis was not an accurate diagnosis since any shoulder pathology would not cause non-dermatomal neurologic complaints, let alone distal arm symptoms. Dr. Busfield expressed doubt regarding the existence of a shoulder issue or frozen shoulder based on his review of the medical record, diagnostic tests, and history.

On September 19, 2022, OWCP requested clarification from Dr. Busfield. It specifically noted, "The issue is whether [appellant] has any continuing disability or residuals on/after June 17, 2021, the date [OWCP] terminated her wage loss and medical benefits."

Appellant continued to submit reports from Dr. Cabayan, wherein he repeated his prior findings and conclusions.

In a supplemental report dated January 29, 2024, Dr. Busfield opined that appellant developed neuropathic pain due to the accepted shoulder conditions, which was likely why she did not have improvement with surgery. He concluded that 'If I used the question parameters and

SOAF (statement of accepted facts) that limited the diagnosis to shoulder strain and tendon disorder, and no other information including her tingling complaints and chronic pain, then I would agree that she is capable of her usual work."

By *de novo* decision dated February 26, 2024, OWCP denied appellant's claim for continuing disability and/or residuals on or after June 17, 2021 causally related to the accepted employment injury. It accorded the weight of the medical evidence to the opinion of Dr. Busfield.[3]

LEGAL PRECEDENT

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 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]

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.[9]

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[3] Although the February 26, 2024 decision again terminated appellant's wage-loss compensation and medical benefits, effective that date, the Board notes that OWCP never resumed payment of compensation following its June 17, 2021 termination of wage-loss compensation and medical benefits. Therefore, the issues properly before the Board are whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective June 17, 2021, as she no longer had disability or residuals causally related to her accepted May 25, 2017 employment injury; and whether appellant has met her burden of proof to establish continuing disability or residuals on or after June 17, 2021 causally related to the accepted employment injury.

[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).

[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] 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).

For a conflict to arise, the opposing physicians' opinions must be of virtually equal weight and rationale.[10] In situations where the case is properly 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.[11]

ANALYSIS

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation benefits and medical benefits, effective June 17, 2021.

On February 8, 2021, OWCP referred appellant, along with the medical record, a SOAF, and a series of questions, to Dr. Welborn for a second opinion examination to determine whether appellant continued to have residuals or disability causally related to her accepted employment injury.

Dr. Welborn, in a March 24, 2021 report, related appellant's history of injury and noted his review of the SOAF and medical record. He reported his findings on examination, and assessed strain unspecified muscle, fascia tendon at shoulder, upper arm, right arm resolved, and stable right shoulder adhesive capsulitis. Dr. Welborn noted that appellant's physical examination showed limited right shoulder motion, tenderness of the right suprascapular and trapezius, no swelling, and no erythema. However, he noted that he could not medically explain her loss of motion, and opined it was not a valid objective finding. Dr. Welborn therefore determined that appellant's work-related right shoulder strain and adhesive capsulitis had resolved, and no further treatment was required. He further opined that appellant's wrist and elbow pain, bilateral carpal tunnel syndrome, and degenerative right shoulder conditions were not work related. Dr. Welborn concluded that appellant could not perform her carrier tech position, which he attributed to nonwork-related blood cell problem, sciatica, and difficulty walking, but found she was capable of performing sedentary work. In an accompanying Form OWCP-5c of even date, he reiterated that appellant was capable of working eight hours per day in a sedentary position. Dr. Welborn provided work restrictions of no pushing, pulling, or lifting more than 10 pounds. In a May 17, 2021 supplemental report, Dr. Welborn opined that appellant's accepted right shoulder tendinosis and right shoulder strain had resolved. He related that no further medical treatment was required for her work-related shoulder injury. Dr. Welborn attributed appellant's continued right shoulder pain to degenerative changes and indicated that her continued medical treatment was for neuropathic pain which was not work related.

Contrarily, Dr. Cabayan, in reports dated February 4 and March 3 and 30, 2021 diagnosed right shoulder impingement, rotator cuff strain, bicipital tendinitis with frozen shoulder, right elbow sprain, left shoulder impingement syndrome, bilateral CMC thumb joint inflammation, cervical discogenic disease, and bilateral carpal tunnel syndrome. In his February 4, 2021 report, he continued to hold appellant off work. In reports dated March 3 and 30, 2021, Dr. Cabayan

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

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

restricted appellant to left arm work only. In reports dated January 13, April 30, and June 8, 2021, he continued to opine that appellant could only perform left-handed work.

As explained above, if there is a disagreement between an employee's treating physician and an OWCP referral physician, OWCP will appoint an IME who shall make an examination.[12] As a conflict in medical opinion existed between Drs. Welborn and Cabayan at the time of the June 17, 2021 termination of appellant's wage-loss compensation and medical benefits, the Board finds that OWCP failed to meet its burden of proof.[13]

CONCLUSION

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective June 17, 2021.

ORDER

IT IS HEREBY ORDERED THAT the February 26, 2024 decision of the Office of Workers' Compensation Programs is reversed.

Issued: July 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

[12] *Id.*

[13] In light of the Board's finding with regard to Issue 1, Issue 2 is rendered moot.