

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

_____)	
L.S., Appellant)	
)	
and)	Docket No. 20-0570
)	Issued: December 15, 2020
U.S. POSTAL SERVICE, POST OFFICE,)	
Ridgewood, NY, Employer)	
_____)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Deputy Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 16, 2020 appellant, through counsel, filed a timely appeal from December 13 and 20, 2019 merit decisions of the Office of Workers' Compensation Programs (OWCP).²

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 The Board notes that, following the December 20, 2019 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. *Id.*

Pursuant to the Federal Employees' Compensation Act³ (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 appellant has met her burden of proof to establish continuing disability or residuals on or after August 14, 2018 due to her accepted employment-related conditions of thoracic, lumbar, and cervical sprains/strains; thoracic, lumbar, and cervical contusions; and left shoulder contusion; and (2) whether appellant has met her burden of proof to establish that OWCP should expand acceptance of her claim to include additional conditions causally related to her December 18, 2017 accepted employment injury.

FACTUAL HISTORY

This case has previously been before the Board.⁴ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On December 18, 2017 appellant, then a 48-year-old city letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date she injured her left buttock and left shoulder when she fell down stairs while in the performance of duty. She stopped work on December 18, 2017. OWCP accepted the claim for thoracic sprain/strain, lumbar sprain, cervical sprain, cervical, thoracic, and lumbar contusions, and a left shoulder contusion. It paid appellant wage-loss compensation for total disability on the supplemental rolls from February 2 through May 26, 2018 and on the periodic rolls from May 27 until June 23, 2018, when she returned to full-time modified employment.

On January 11, 2018 Dr. Philip Baldeo, who specializes in family medicine, discussed appellant's history of an employment injury on December 18, 2017 and her continued complaints of pain in her neck, left shoulder, and lower back and weakness and numbness of the upper and lower extremities bilaterally. He diagnosed persisting cervical myofasciitis, traumatic cervical pain syndrome, thoracic and lumbosacral sprain/strain, traumatic lumbar radiculitis/radiculopathy, and disc herniations, contusions, and internal derangement of the cervical, thoracic, and lumbar spine. Dr. Baldeo attributed the diagnosed conditions to appellant's employment injury as long as he had an accurate history of injury. He found that she was totally disabled.⁵

A magnetic resonance imaging (MRI) scan of the cervical spine dated January 29, 2018 showed minimal C5-6 disc bulging. A January 31, 2018 MRI scan of the left shoulder revealed mild subacromial subdeltoid bursitis and small-to-moderate glenohumeral joint effusion. Electrodiagnostic studies obtained January 26, 2018 revealed right carpal tunnel syndrome.

³ 5 U.S.C. § 8101 *et seq.*

⁴ Docket No. 19-0959 (issued September 24, 2019).

⁵ Dr. Baldeo provided similar reports on February 15 and April 10, 2018. He further provided periodic nerve blocks throughout 2018 and 2019.

On April 2, 2018 OWCP referred appellant to Dr. Leon Sultan, a Board-certified orthopedic surgeon, for a second opinion examination.

In a report dated April 23, 2018, Dr. Sultan discussed appellant's history of a December 18, 2017 employment injury and reviewed the January 31, 2018 MRI scans of the cervical spine and left shoulder. On examination he found intact sensation of the upper extremities with good grip strength. Dr. Sultan measured good range of motion of the cervical and thoracolumbar spine and the left shoulder. He further found negative straight leg raise bilaterally and intact sensation of the lower extremities. Dr. Sultan opined that the findings on physical examination of appellant's cervical and thoracolumbar spine and left shoulder were unremarkable. He attributed the subacromial/subdeltoid bursitis demonstrated on MRI scan to the accepted employment injury, but opined that the minimal disc bulging at C5-6 was unrelated to her employment. Dr. Sultan concluded that appellant had no further objective findings or residuals of her cervical spine, thoracolumbar spine, or left shoulder conditions and that she could resume her usual employment. In an accompanying work capacity evaluation (Form OWCP-5c), he indicated that she could work full time without limitations.

An April 23, 2018 MRI scan of appellant's lumbar spine revealed a disc herniation at L3-4, a disc bulge at L4-5 with an annular tear on the left, and mild-to-moderate central canal stenosis and foraminal narrowing from L3 to L5.

In an addendum report dated June 18, 2018, Dr. Sultan opined that appellant had sustained only a soft trauma injury to her cervical and thoracolumbar spine and left shoulder due to the December 18, 2017 employment injury.⁶ In response to the question of whether appellant had sustained lumbar disc displacement, lumbar disc herniation, lumbar radiculopathy, and cervical, thoracic, and lumbar internal derangement due to the accepted employment injury, he advised that his examination had not revealed any evidence of lumbar disc displacement with a lumbar disc herniation and radiculopathy. Dr. Sultan further advised that the mild disc bulging at C5-6 was unrelated to the December 18, 2017 employment injury. He found no functional impairment of the left shoulder, or cervical, thoracic, and lumbar spine and opined that appellant could resume her usual employment.

By decision dated June 17, 2018, OWCP denied appellant's request to expand the acceptance of her claim to include lumbar disc displacement, lumbar radiculitis/radiculopathy, cervical disc herniation, and cervical, thoracic, and lumbar internal derangement. It found that she had not submitted reasoned medical evidence explaining how the diagnosed conditions were caused or aggravated by her December 18, 2017 employment injury.⁷

On July 2, 2018 OWCP advised appellant of its proposed termination of her wage-loss compensation and medical benefits as the evidence established that she no longer had any

⁶ In duty status reports (Form CA-17) dated April 13 through June 15, 2018, Dr. Baldeo diagnosed bursitis of the left shoulder and a cervical and lumbar spine condition. He provided restrictions and indicated that he had not advised appellant to resume work. In a June 15, 2018 return to work certificate, Dr. Baldeo advised that he was treating appellant for an employment injury and that he was unsure when she could resume her usual activities.

⁷ Appellant on June 23, 2018 returned to limited-duty full-time employment with the employing establishment.

employment-related residuals or disability due to employment injury. It afforded her 30 days to submit additional evidence or argument if she disagreed with the proposed termination.

Thereafter, appellant submitted a May 24, 2018 report from Dr. Baldeo. Dr. Baldeo reviewed her history of falling while walking down concrete stairs and current complaints of pain in her neck, left shoulder, back, and buttocks. He reviewed the diagnostic studies, noting that a January 26, 2018 electromyogram (EMG) showed evidence of right carpal tunnel syndrome. Dr. Baldeo provided findings on examination and diagnosed resolving cervical myofasciitis, traumatic cervical spine syndrome, resolved thoracic sprain/strain, traumatic lumbosacral spine sprain and disc displacement, traumatic lumbar radiculitis/radiculopathy, resolving traumatic disc herniations of the cervical and lumbar spine, traumatic internal derangement of the lumbar spine, and contusions of the cervical and lumbar spine and the left shoulder. He opined, "If the history given by [appellant] is true, I conclude with a reasonable degree of medical certainty that the accident on December 18, 2017 is a competent producing cause of [her] injuries and there is a causal relationship between the accident and the injuries." Dr. Baldeo provided a substantially similar report on June 25, 2018.⁸

By decision dated August 13, 2018, OWCP terminated appellant's wage-loss compensation and entitlement to medical benefits effective August 14, 2018. It found that the opinion of Dr. Sultan constituted the weight of the evidence and established that she had no further residuals of her accepted employment injury.

On August 23, 2018 appellant, through counsel, requested a telephonic hearing regarding the August 13, 2018 decision before a representative of OWCP's Branch of Hearings and Review.

OWCP thereafter received a July 6, 2018 report from Dr. Baldeo. Dr. Baldeo reviewed Dr. Sultan's report and advised that he did not review all the MRI scans and electrodiagnostic test results, noting that some test results were not available at the time of his report. He maintained that his examination was brief and questioned his findings. Dr. Baldeo noted that Dr. Sultan's report was "being used to terminate [appellant's] injury in a work[-]related trauma that I believe is legitimate...."

On August 22, 2018 Dr. Baldeo indicated that appellant was currently working with left shoulder, neck, and low back pain. He diagnosed persisting cervical myofasciitis and cervical pain syndrome, resolved thoracic sprain/strain, persisting lumbosacral disc displacement and radiculitis, cervical and lumbar disc herniations and internal derangement, and contusions of the cervical and lumbar spine and left shoulder. Dr. Baldeo found that appellant was partially disabled due to her employment injury.⁹

⁸ On July 24 and 25 and August 3, 2018 Dr. Baldeo provided a physical performance evaluation. On July 25, 2018 he described the range of motion and strength findings and recommended treatment. In a duty status report dated July 26, 2018, Dr. Baldeo indicated that appellant was partially disabled from employment and provided work restrictions.

⁹ Dr. Baldeo continued to treat appellant with nerve blocks. In duty status reports (Form CA-17) dated March 5 through May 6, 2019, he diagnosed bursitis of the left shoulder and a cervical and lumbar spine condition, and provided work restrictions.

A telephonic hearing was held on January 3, 2019 on OWCP's August 13, 2018 termination decision. Appellant described her difficulties performing activities because of her left shoulder and back condition.

In a report dated January 30, 2019, Dr. Baldeo asserted that Dr. Sultan had inaccurately represented appellant's condition. He described her continued complaints and opined that she was partially disabled due to her employment injury. Dr. Baldeo recommended electrodiagnostic testing.

By decision dated March 7, 2019, OWCP's hearing representative affirmed the August 13, 2018 termination decision. He found that the opinion of Dr. Sultan established that appellant had no further disability or need for medical treatment due to her accepted conditions. The hearing representative determined, however, that upon return of the case record OWCP should further develop the issue of whether her claim should be expanded to include a lumbar or cervical condition, carpal tunnel syndrome, or any other conditions due to her accepted employment injury, noting that Dr. Sultan had not reviewed all of the diagnostic studies in reaching his opinion regarding claim expansion. He instructed OWCP, on remand, to obtain an opinion from Dr. Sultan regarding whether appellant had sustained additional conditions due to the accepted employment injury and to discuss the finding from the lumbar MRI scan.

Thereafter, OWCP received a report dated March 6, 2019 from Dr. Baldeo, who discussed appellant's history of injury, provided examination findings, and reviewed the diagnostic studies. Dr. Baldeo noted that she currently complained of pain in her neck, left shoulder, upper and lower back, and buttocks, and numbness in the left upper extremity. He advised that Dr. Sultan had inaccurately represented appellant's clinical findings. On examination Dr. Baldeo found pain with palpation at L3 to L5 with intact sensation and full motor strength. He diagnosed persistent cervical and lumbar myofasciitis¹⁰ with radiculopathy, to rule out radiculopathy versus myopathy, and to rule out internal derangement of the left shoulder, cervical, and lumbar spine. Dr. Baldeo found that appellant was partially disabled from her employment injury.

On March 14, 2019 OWCP requested that Dr. Sultan review the April 23, 2018 MRI scan of the lumbar spine and explain whether the findings were causally related to the December 18, 2017 employment injury. It further requested that he advise whether appellant sustained carpal tunnel syndrome or a further injury to her lumbar or cervical discs as a result of the work injury.

On April 1, 2019 appellant appealed the March 7, 2019 termination decision to the Board.

On May 14, 2019 OWCP expanded acceptance of the claim to include subacromial/subdeltoid bursitis of the left shoulder.

Dr. Baldeo provided progress reports on April 15 and June 6, 2019 with the same diagnoses and causation finding as in his March 16, 2019 report. In a May 6, 2019 duty status report (Form CA-17), he diagnosed cervical and lumbar myofasciitis and bursitis and listed work restrictions.

¹⁰ Dr. Baldeo provided the diagnoses as "cmf" and "lmf," which appear to be cervical and lumbar myofasciitis.

In an addendum report dated June 6, 2019, Dr. Sultan advised that his April 23, 2018 examination had revealed no abnormal findings for the cervical spine, thoracolumbar spine, or left shoulder. He noted, "From an orthopedic point of view, there was no correlation between this claimant's lumbar spine examination and the lumbar spine MRI [scan] reading of April 23, 2018." Dr. Sultan indicated that he had reviewed the MRI scans and his findings regarding appellant's condition was unchanged as his examination findings had demonstrated no residual post-traumatic impairment. He found that she had not sustained carpal tunnel syndrome or a cervical or thoracolumbar spine condition due to her fall on December 18, 2017 noting that his examination failed to "confirm any positive examination findings consistent with carpal tunnel syndrome nor were there any positive examination findings consistent with traumatic injury to the cervical spine or thoracolumbar spine." Dr. Sultan determined that appellant could perform her regular employment duties.

By decision dated June 17, 2019, OWCP denied appellant's request to expand her claim to include lumbar disc displacement, lumbar radiculitis/radiculopathy, cervical disc herniation, and cervical, lumbar, and thoracic internal derangement.

Thereafter, OWCP received Form CA-17 duty status reports dated June through September 2019 from Dr. Baldeo.

On June 25, 2019 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review regarding the June 17, 2019 decision denying her request for claim expansion.

By decision dated September 24, 2019, the Board affirmed the March 7, 2019 decision.¹¹

Thereafter, OWCP received progress reports dated July through October 2019 from Dr. Baldeo. Dr. Baldeo discussed the history of the December 18, 2017 employment injury and again asserted that Dr. Sultan had inaccurately represented appellant's condition. He provided examination findings and opined that her condition was causally related to the accepted employment injury. Dr. Baldeo diagnosed persistent cervical and lumbar myofasciitis with radiculopathy and to rule out internal derangement of the left shoulder, and cervical and lumbar areas of the spine.

A telephonic hearing was held on October 16, 2019 regarding the issue of claim expansion. Appellant advised that she was currently working limited duty. Counsel argued that a conflict existed between Dr. Sultan and Dr. Baldeo.

On October 17, 2019 appellant, through counsel, requested reconsideration of the termination of her compensation. In support of her request, she submitted an April 5, 2019 letter of medical necessity from Dr. Baldeo requesting authorization for diagnostic testing. Dr. Baldeo advised that electrodiagnostic testing could evaluate appellant's symptoms and differentiate between possible conditions.

¹¹ *Supra* note 4.

In a Form CA-17 report dated October 23, 2019, Dr. Baldeo diagnosed cervical and lumbar myofasciitis and provided work restrictions. In a medical information and restriction assessment form from the employing establishment, he listed work restrictions.

By decision dated December 13, 2019, OWCP denied modification of its March 7, 2019 decision.¹² It found that appellant had not established continuing disability or the need for medical treatment due to her accepted employment injury.

By decision dated December 20, 2019, OWCP's hearing representative affirmed the June 17, 2019 decision denying appellant's request for expansion. He found that she had not established that her claim should be expanded to include lumbar radiculitis/radiculopathy, a cervical disc herniation, or cervical, lumbar, and thoracic internal derangement.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP properly terminates compensation benefits, the burden shifts to appellant to establish continuing disability after that date causally related to the accepted injury.¹³ To establish causal relationship between the accepted conditions 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.¹⁴

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish continuing disability or residuals after August 14, 2018 due to her accepted employment-related conditions of thoracic, lumbar, and cervical sprains/strains; thoracic, lumbar, and cervical contusions; and left shoulder contusion.

Preliminarily, the Board notes that it is unnecessary to consider the evidence appellant submitted prior to the issuance of OWCP's March 7, 2019 decision because the Board previously considered that evidence in its September 24, 2019 decision. Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.¹⁵

Following OWCP's March 7, 2019 decision, appellant submitted progress reports dated March 6 through October 2019 from Dr. Baldeo. In these reports, Dr. Baldeo discussed her history of a December 18, 2017 employment injury and advised that Dr. Sultan had inaccurately represented her clinical condition. He diagnosed persistent cervical and lumbar myofasciitis with radiculopathy, to rule out radiculopathy versus myopathy, and to rule out internal derangement of

¹² OWCP indicated that it was denying modification of the prior Board decision. However, decisions of the Board become final after 30 days and are not subject to further review. 20 C.F.R. § 501.6(d). The proper subject of modification was OWCP's March 7, 2019 termination decision.

¹³ See *S.M.*, Docket No. 18-0673 (issued January 25, 2019); *L.C.*, Docket No. 18-1759 (issued June 26, 2019).

¹⁴ *Id.*

¹⁵ *L.K.*, Docket No. 19-0313 (issued January 15, 2020); *A.L.*, Docket No. 19-0285 (issued September 24, 2019).

the left shoulder, cervical, and lumbar spine. Dr. Baldeo found that appellant was partially disabled from her employment injury. The issue, however, is whether the accepted conditions of cervical, thoracic, and lumbar sprains and contusions, and left shoulder contusion caused continuing disability on or after August 14, 2018. Dr. Baldeo failed to offer adequate medical rationale explaining how the accepted conditions resulted in continued disability after the termination on or after August 14, 2018. Medical reports without adequate rationale are of diminished probative value and insufficient to meet appellant's burden of proof.¹⁶ Additionally, the Board previously addressed Dr. Baldeo's finding that Dr. Sultan had inaccurately represented her condition and found that it was insufficient to support continuing residuals or disability.

Appellant further submitted Form CA-17 reports dated June through October 2019 from Dr. Baldeo. The report, however, is merely a form report and does not contain an opinion on whether the accepted employment injury caused disability from employment; consequently, it is of no probative value on the issue of causal relationship.¹⁷ Appellant therefore has not met her burden of proof to establish continuing disability or residuals after August 14, 2018 causally related to the accepted employment injury.¹⁸

LEGAL PRECEDENT -- ISSUE 2

When an employee claims that, a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.¹⁹

Causal relationship is a medical question that requires medical opinion evidence to resolve the issue.²⁰ The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the accepted employment injury.²¹

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met her burden of proof to establish that OWCP should expand acceptance of her claim to include additional conditions causally related to her accepted December 18, 2017 employment injury.

OWCP requested clarification from Dr. Sultan regarding whether appellant's claim should be expanded to include additional employment-related conditions. In a report dated June 6, 2019,

¹⁶ *E.H.*, Docket No. 19-1352 (issued December 18, 2019); *E.C.*, Docket No. 17-1645 (issued June 11, 2018).

¹⁷ *L.S.*, Docket No. 19-0959 (issued September 24, 2019).

¹⁸ *See H.Y.*, Docket No. 18-1673 (issued May 20, 2019).

¹⁹ *K.T.*, Docket No. 19-1718 (issued April 7, 2020); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

²⁰ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

²¹ *Id.*

Dr. Sultan opined that his examination had demonstrated no abnormalities of the cervical spine, thoracolumbar spine, or left shoulder. He advised that the findings on lumbar MRI scan did not correlate to any findings on examination. Dr. Sultan found that appellant had not sustained carpal tunnel syndrome, or a condition of the lumbar, thoracolumbar, or cervical spine due to her December 18, 2017 employment injury based on the lack of findings supporting a traumatic injury on examination. The Board finds that the opinion of Dr. Sultan, who relied upon an accurate history of injury and provided rationale for his findings, represents the weight of the evidence and establishes that she has not met her burden of proof to establish that her claim should be expanded to include additional employment-related conditions.

Appellant submitted progress reports from Dr. Baldeo that both predated the Board's prior decision and those dated March through September 2019 which address the issue of claim expansion. In these reports Dr. Baldeo reviewed her history of injury and provided findings on examination. He diagnosed persistent cervical and lumbar myofascitis with radiculopathy, to rule out radiculopathy *versus* myopathy, and to rule out internal derangement of the left shoulder, cervical, and lumbar spine and found that appellant was partially disabled from her employment injury. Dr. Baldeo failed, however, to provide any rationale explaining how the additional diagnosed conditions were causally related to the accepted employment injury.²² A medical opinion not fortified by medical rationale is of diminished probative value.²³ Dr. Baldeo's reports are insufficient to overcome the weight accorded to Dr. Sultan or create a conflict in the medical opinion evidence and therefore are insufficient to meet appellant's burden of proof.

Appellant further submitted Form CA-17 reports, but as these form reports fail to address the cause of the conditions diagnosed, they are of no probative value on the issue of causal relationship.²⁴

On appeal counsel contends that OWCP failed to apply the appropriate causation standard or give sufficient deference to appellant's attending physician. As discussed, appellant failed to provide sufficient reasoned medical evidence supporting either continued disability or residuals of her accepted employment injury or that her claim should be expanded to include additional conditions, and thus failed to meet her burden of proof.

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 her burden of proof to establish continuing disability or the need for further medical treatment after August 14, 2018 causally related to her accepted December 18, 2017 employment injury. The Board further finds that she had not met

²² See *A.T.*, Docket No. 20-0334 (issued October 8, 2020).

²³ *Id.*; *T.W.*, Docket No. 18-1573 (issued July 19, 2019).

²⁴ See *L.S.*, *supra* note 17.

her burden of proof to establish that OWCP should expand acceptance of her claim to include additional conditions causally related to her December 18, 2017 accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the December 20 and 13, 2019 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 15, 2020
Washington, DC

Christopher J. Godfrey, Deputy Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board