

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

A.G., Appellant	)	
	)	
and	)	<b>Docket No. 20-1087</b>
	)	<b>Issued: December 31, 2020</b>
<b>DEPARTMENT OF THE TREASURY,</b>	)	
<b>BUREAU OF ENGRAVING &amp; PRINTING,</b>	)	
<b>Washington, DC, Employer</b>	)	
	)	

*Appearances:*  
Erik B. Blowers, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
PATRICIA H. FITZGERALD, Alternate Judge

**JURISDICTION**

On April 28, 2020 appellant, through counsel, filed a timely appeal from a November 21, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **ISSUES**

The issues are: (1) whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective September 7, 2018, as she no longer had residuals or disability causally related to the accepted August 11, 1989 employment injury; and (2) whether appellant has met her burden of proof to establish continuing employment-related disability or residuals on or after September 7, 2018.

## **FACTUAL HISTORY**

On August 14, 1987 appellant, then a 28-year-old packer, filed a traumatic injury claim (Form CA-1) alleging that on August 11, 1987, she injured her upper back when she was struck from behind by a moving cart while in the performance of duty. She stopped work on August 12, 1987 and returned on August 14, 1987. Appellant stopped work again on October 27, 1987. OWCP accepted the claim for cervical sprain and lumbosacral strain, thoracic region. It paid appellant wage-loss compensation and placed her on the periodic rolls, effective February 14, 1988.

In 2000 appellant returned to work in the private sector as a preschool teacher in a limited-duty capacity. OWCP reduced her wage-loss compensation benefits based on her actual wages. The record reveals that in 2002 appellant began employment as a data entry operator. She stopped work completely in 2006 and has not returned.

On April 25, 2018 OWCP referred appellant, along with a statement of accepted facts (SOAF), a copy of the case record, and a series of questions, to Dr. Mark Rowley, a Board-certified orthopedic surgeon, for a second opinion evaluation regarding the status of her accepted August 11, 1987 employment injury. The March 16, 2016 SOAF noted that appellant sustained an injury to her back on August 11, 1987 while in the performance of duty.

In a May 23, 2018 report, Dr. Rowley reviewed the SOAF and the medical evidence of record. He accurately described the August 11, 1987 employment injury and recounted appellant's chief complaint of low back pain. Upon physical examination of appellant's cervical spine, Dr. Rowley observed active range of motion without pain. He also reported 5/5 motor strength bilaterally in the rotator cuff, deltoid, triceps, and biceps. Upon examination of appellant's lumbar spine, Dr. Rowley noted active range of motion with pain. He also observed 5/5 motor strength in the hip flexors, hip extensors, quadriceps, hamstrings, and foot and ankle dorsiflexors, and plantarflexors. Dr. Rowley summarized that appellant was a "former packer for the [employing establishment] who allegedly injured her cervical and lumbar spine in 1987." He opined that appellant had no restrictions or limitations related to the accepted diagnoses of cervical sprain and lumbar sprain. Dr. Rowley explained that these were "self-limiting injuries" and that appellant would be expected to return to work within two to three months. He further reported that he was unable to opine as to appellant's work capacity due to insufficient objective information.

On August 1, 2018 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits because she no longer had residuals or disability due to the accepted August 11, 1987 employment injury. It found that the weight of medical evidence rested with the May 23, 2018 report of Dr. Rowley, who found that she no longer had any residuals or disability causally

related to her accepted lumbar and cervical injuries. OWCP afforded appellant 30 days to submit additional evidence or argument, in writing, if she disagreed with the proposed termination.

In an August 12, 2018 response, appellant related that she was including medical documents to assist in her appeal of the proposed termination. She noted that she disagreed with Dr. Rowley's opinion because she believed her work injuries had not resolved. Appellant also alleged that her diagnoses should include a bulging disc, herniated disc, and degenerative disc disease. She provided a list of medical facilities that she had contacted to seek medical treatment and a summary of previous medical reports.

Appellant submitted medical reports dated from December 19, 2008 through May 29, 2009. OWCP also received diagnostic studies, including a May 4, 2006 cervical spine magnetic resonance imaging (MRI) scan report and a December 6, 2006 lumbar spine MRI scan report.

In an August 26, 2018 letter, appellant asserted that terminating her benefits and returning her to work would place her at risk of reinjury. She also requested that OWCP review additional information, which showed that she was diagnosed with degenerative disc disease. Appellant submitted an August 15, 2018 after visit summary report by Dr. Tammy L. Boyd, a Board-certified family medicine specialist, and an August 20, 2018 letter to Dr. Rowley.

By decision dated September 7, 2018, OWCP finalized the termination of appellant's wage-loss compensation and medical benefits, effective that date. It found that the weight of medical evidence continued to rest with Dr. Rowley, OWCP's second opinion examiner, who concluded in his May 23, 2018 report that appellant had no residuals or disability causally related to her accepted August 11, 1987 work-related injury.

Appellant subsequently submitted additional medical evidence.

In an October 1, 2018 letter, Dr. Boyd reported that findings were consistent with cervical spondylosis, lumbar spondylosis, and degenerative disc disease as noted on recent x-ray scans.

In reports dated November 6 and 30, 2018, Dr. Mary Bodea, a Board-certified physical medicine and rehabilitation specialist, reviewed appellant's history and recounted her complaints of constant low back pain radiating intermittently to both legs. She conducted a physical examination and provided various diagnoses, including cervical region radiculopathy and spondylosis and lumbar radiculopathy.

Appellant also submitted an October 31, 2018 after visit summary report by Dr. David Clark, Jr., a Board-certified emergency medicine specialist, and a November 27, 2018 pain management assessment by Dr. Henry A. Pool, a Board-certified neurosurgeon.

OWCP also received diagnostic testing reports. A September 21, 2018 cervical spine x-ray showed moderate spondylosis and no instability on flexion and extension. A September 21, 2018 lumbar spine x-ray showed mild spondylosis of the lumbar spine and degenerative disc disease worse at the L4-5 level. An October 16, 2018 cervical spine MRI scan revealed left paracentral and foraminal disc osteophyte at C5-6 and mild broad-based disc bulge with a small

central disc protrusion at C4-5. A November 16, 2018 lumbar spine MRI scan revealed mild spinal stenosis at L3-4 and moderate-to-severe spinal stenosis at L4-5 with disc bulging.

On September 6, 2019 appellant requested reconsideration. She alleged that her reconsideration request was based on the fact that her residuals had not resolved from the 1987 work-related injury. Appellant also asserted that Dr. Rowley's report was insufficient in objective findings to carry the weight of the medical evidence. She provided a history of injury and a timeline of the medical treatment that she had received.

In a September 5, 2019 letter, Dr. Boyd reported a history of unbearable back pain precluding full or part-time work. She reported that appellant's findings were consistent with cervical spondylosis, lumbar spondylosis, and degenerative disc disease as noted on recent imaging studies.

By decision dated November 21, 2019, OWCP denied modification of the September 7, 2018 termination decision.

### **LEGAL PRECEDENT**

Once OWCP accepts a claim and pays compensation, it bears the burden of proof to justify termination or modification of benefits.<sup>3</sup> It may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.<sup>4</sup> OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>5</sup>

It is OWCP's responsibility to provide a complete and proper frame of reference for a physician by preparing a SOAF.<sup>6</sup> Its procedures provide that the claims examiner is responsible for ensuring that the SOAF is correct, complete, unequivocal, and specific. It should include a complete record of all pertinent facts related to the injury or medical condition. The omission of a critical fact diminishes the validity of a medical opinion or decision as much as an incorrect statement.<sup>7</sup> When an OWCP medical adviser, second opinion specialist, or referee physician renders a medical opinion based on a SOAF which is incomplete or inaccurate, or does not use the

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<sup>3</sup> *A.D.*, Docket No. 18-0497 (issued July 25, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

<sup>4</sup> *A.G.*, Docket No. 18-0749 (issued November 7, 2018); *see also I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

<sup>5</sup> *R.R.*, Docket No. 19-0173 (issued May 2, 2019); *T.P.*, 58 ECAB 524 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

<sup>6</sup> *N.W.*, Docket No. 16-1890 (issued June 5, 2017); *K.V.*, Docket No. 15-0960 (issued March 9, 2016).

<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Statement of Accepted Facts*, Chapter 2.809.4(a)(2) (September 2009).

SOAF as the framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether.<sup>8</sup>

### ANALYSIS

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective September 7, 2018.

OWCP terminated appellant's wage-loss compensation and medical benefits based on the May 23, 2018 report of Dr. Rowley, an OWCP second opinion examiner. Dr. Rowley accurately described the August 11, 1987 employment injury and provided examination findings. He opined that appellant had no restrictions or limitations related to the accepted diagnoses of cervical sprain and lumbar sprain. Dr. Rowley explained that these were "self-limiting injuries" and that appellant would be expected to return to work within two to three months. He also reported that he was unable to opine on appellant's work capacity due to insufficient objective information.

The Board finds that Dr. Rowley's opinion was conclusory in nature and did not contain sufficient medical reasoning to establish that appellant no longer had residuals or disability due to her August 11, 1987 employment injury.<sup>9</sup> In assessing medical evidence, the number of physicians supporting one position or another is not controlling; the weight of such evidence is determined by its reliability, its probative value, and its convincing quality.<sup>10</sup> The factors that determine the probative value of medical evidence include the opportunity for and thoroughness of examination performed by the physician, the accuracy or completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested, and the medical rationale expressed by the physician on the issues addressed to him by OWCP.<sup>11</sup>

The Board finds that Dr. Rowley's report lacks sufficient medical reasoning to establish that appellant's accepted conditions had resolved. Dr. Rowley opined that appellant had no restrictions or limitations related to her cervical and lumbar sprains and explained that these were "self-limiting injuries. He did not give any medical explanation as to how appellant's physical examination established that her accepted conditions had resolved. Rationalized medical evidence must include rationale explaining how the physician reached the conclusion he or she is supporting.<sup>12</sup> In addition, Dr. Rowley did not definitively conclude that appellant was able to return to work. On the contrary, he specifically noted that he was unable to opine on appellant's work capacity due to a lack of objective information.<sup>13</sup> Dr. Rowley did not provide an opinion

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<sup>8</sup> *Id.* at Chapter 2.809.4(a)(4); *M.C.*, Docket No. 18-1199 (issued April 5, 2019).

<sup>9</sup> *See J.W.*, Docket No. 19-1014 (issued October 24, 2019); *S.B.*, Docket No. 18-0700 (issued January 9, 2019); *S.J.*, Docket No. 17-0543 (issued August 1, 2017).

<sup>10</sup> *D.W.*, Docket No. 18-0123 (issued October 4, 2018); *Nicolette R. Kelstrom*, 54 ECAB 570 (2003).

<sup>11</sup> *A.G.*, Docket No. 19-0220 (issued August 1, 2019); *James T. Johnson*, 39 ECAB 1252 (1988).

<sup>12</sup> *B.B.*, Docket No. 19-1102 (issued November 7, 2019); *Beverly A. Spencer*, 55 ECAB 501 (2004).

<sup>13</sup> *See R.K.*, Docket No. 19-1980 (issued May 7, 2020).

with sufficient medical reasoning to establish that appellant no longer had residuals or disability due to her accepted August 11, 1987 employment injury.<sup>14</sup>

Furthermore, the Board finds that Dr. Rowley's opinion was based on an inaccurate history. The March 28, 2016 SOAF provided to him did not list appellant's accepted conditions of cervical sprain and lumbosacral strain of the thoracic region, but merely noted that appellant sustained a back injury at work on August 11, 1987. As noted, a SOAF should include a complete record of all pertinent facts related to the medical condition.<sup>15</sup> OWCP's procedures provide that the SOAF should include essential elements, such as date of injury, job held on date of injury, employment history, mechanism of injury, and condition(s) claimed or accepted.<sup>16</sup> When an OWCP medical adviser, second opinion specialist, or referee physician renders a medical opinion based on a SOAF that is incomplete or inaccurate, or 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.<sup>17</sup>

Once OWCP undertook development of the record it was required to complete development of the record by procuring medical evidence that would resolve the relevant issue in the case.<sup>18</sup> As it did not request that Dr. Rowley provide a supplemental opinion based on an accurate SOAF and clarifying his opinion, the Board finds that OWCP has not met its burden of proof in terminating appellant's wage-loss compensation and medical benefits based on Dr. Rowley's May 23, 2018 report.<sup>19</sup>

### **CONCLUSION**

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective September 7, 2018.

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<sup>14</sup> *J.W.*, *supra* note 9; *S.B.*, *supra* note 9; *S.W.*, Docket No. 18-0005 (issued May 24, 2018).

<sup>15</sup> *Supra* note 7.

<sup>16</sup> *Id.* at Chapter 2.809.5.

<sup>17</sup> *Supra* note 8.

<sup>18</sup> *See J.F.*, Docket No. 17-1716 (issued March 1, 2018).

<sup>19</sup> *See M.P.*, Docket No. 20-0024 (issued September 1, 2020); *D.M.*, Docket No. 19-0749 (issued August 19, 2019).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 21, 2019 decision of the Office of Workers' Compensation Programs is reversed.

Issued: December 31, 2020  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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