

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

_____)	
J.S., Appellant)	
)	
and)	Docket No. 20-1409
)	Issued: September 1, 2021
U.S. POSTAL SERVICE, PLANETARIUM)	
POST OFFICE, New York, NY, Employer)	
_____)	

Appearances:
Anthony Mangona, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 8, 2020 appellant, through counsel, filed a timely appeal from a June 9, 2020 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.³

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.*

³ The Board notes that following the June 9, 2020 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.*

ISSUES

The issues are: (1) whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective March 14, 2020, as she no longer had disability or residuals causally related to her January 27, 2017 employment injury; and (2) whether appellant has established continuing employment-related disability or residuals on or after March 14, 2020.

FACTUAL HISTORY

On January 27, 2017 appellant, then a 55-year-old sales services distribution associate, filed a traumatic injury claim (Form CA-1) alleging that on that date she sustained head and neck injuries when an elevator door hit her on the head as she was walking into the elevator while in the performance of duty. OWCP accepted the claim for brain concussion without loss of consciousness and post-concussive syndrome. Appellant stopped work on January 28, 2017. OWCP paid appellant wage-loss compensation on the supplemental rolls commencing July 24, 2017 and on the periodic rolls commencing October 14, 2018.

In support of her claim, appellant submitted a report dated April 12, 2017 from Dr. Michael S. Taub, an attending Board-certified orthopedic surgeon, who diagnosed cervicgia, thoracalgia, myofascial pain syndrome, lumbosacral radiculopathy, lumbosacral sprain and strain, left shoulder pain/myalgia, right knee pain/myalgia, and post-concussive syndrome (*a.k.a.*, migraine-like headaches) due to the accepted January 27, 2017 employment injury.

In a November 15, 2017 report, Dr. Ranga C. Krishna, a Board-certified neurologist, diagnosed cerebral concussion, post-traumatic headache, traumatic brain injury, cervical and lumbosacral disc herniations with possible radiculopathy. He found appellant totally disabled from work until further notice.

On March 6, 2018 OWCP referred appellant, a statement of accepted facts (SOAF), a set of questions, and the medical record, to Dr. Steven Ender, a Board-certified neurologist for a second opinion evaluation to determine whether she continued to suffer residuals or disability due to her accepted January 27, 2017 employment injury.

In a report dated March 26, 2018, Dr. Ender, based on a physical examination, review of the medical evidence, SOAF, and injury history, opined that appellant's accepted brain concussion and post-concussive syndrome without loss of consciousness had resolved without residuals or disability. He explained that appellant's subjective complaints were not supported by the objective evidence of record. Dr. Ender noted that appellant's examination revealed no abnormalities correlating with her subjective complaints. Physical examination findings included full visual fields, no papilledema with fundoscopic examinations, intact facial sensation to cold sensation and pinprick, no nystagmus or facial weakness noted, normal motor examination, and intact upper and lower extremities sensory examination. Dr. Ender also related that, while appellant did not relate a history of prior injury, review of the record indicated that she had previously sustained cervical and lumbar injury as a result of a March 24, 2012 motor vehicle accident. He concluded that appellant's accepted employment injury had resolved. Dr. Ender further found that no further treatment or testing was required and she seemed capable of returning to her date-of-injury job, full time without restrictions.

On May 8, 2018 OWCP issued a notice proposing to terminate appellant's wage-loss compensation and medical benefits based on Dr. Ender's March 26, 2018 report.

In reports dated May 25, June 1, and October 12, 2018, and February 20, 2019, Dr. Krishna noted appellant was seen for complaints of persistent headaches, dizziness, radiating neck pain to her left shoulder, left-sided hearing deficits, and persistent low back pain. He diagnosed cerebrovascular concussion, traumatic brain injury, left shoulder derangement, cervical disc herniation resulting in cervical radiculopathy, right knee derangement, left ear hearing impairment, and lumbosacral disc herniation resulting in lumbosacral radiculopathy. Dr. Krishna recommended magnetic resonance imaging (MRI) scans for the brain and cervical and lumbar spine as well as bilateral upper and lower extremities electromyography and nerve conduction velocity studies (EMG/NCV). He noted his disagreement with Dr. Ender's conclusion that the accepted post-concussion syndrome had resolved based on her cognitive complaints and positive hail pike maneuver. Dr. Krishna also reiterated that appellant had decreased cervical and lumbar range of motion and her neck and lower back pain complaints, which he opined were consequential to the accepted conditions.

OWCP, in a letter dated September 19, 2019, informed appellant that there was a conflict in medical opinion between Dr. Krishna and Dr. Ender regarding whether there was a causal relationship between her condition and the accepted employment injury and whether she continued to have any disability from work due to her accepted employment injury. It referred her to Dr. David Prince, a Board-certified neurologist, to serve as the impartial medical examiner (IME) to resolve the conflict in the medical opinion evidence.

In a report dated October 30, 2019, Dr. Prince conducted a physical examination and reviewed appellant's medical history and SOAF. He set forth findings based upon appellant's physical examination and opined that she had no residuals of her accepted January 27, 2017 employment injury and could return to her usual employment. Dr. Prince indicated that the medical record established the diagnoses of brain concussion without loss of consciousness and post-concussive syndrome. He referenced examination findings contained in the medical record and noted that the changes in reflexes, strength, and sensation were not persistent throughout the medical record and were unassociated with any abnormalities or reported neuronal structures compromise. Based on his findings, Dr. Prince found no current objective neuroanatomical deficits, normal reflexes, normal coordination, and no objective findings of cranial nerve injury. He also reported that appellant showed no emotional lability, normal movement of head and extremities, and while talking to him directed her head straight at him rather than turning to face him with her right ear more than the left ear. A review of a November 27, 2017 EMG did not support a diagnosis of left C5 radiculopathy. Dr. Prince also reviewed cervical and lumbar MRI scan reports of record and related that the reports described multilevel findings commensurate with long-standing degenerative process, clinically unrelated to the January 27, 2017 incident. He further explained that the MRI scan findings did not show compromise of neuronal structures, were not diagnostic of permanent impairment, including a change in the degenerative process, as a result of the incident of January 27, 2017. Dr. Prince related that appellant did not have objective findings of C5 radiculopathy, or other cervical or lumbosacral radiculopathy. Based upon appellant's physical examination and medical record, he related that the accepted employment injury did not cause an injury to appellant's wrists or median nerves. Dr. Prince opined that appellant had not sustained a cervical or lumbar spine injury as a result of the employment injury,

and her reported symptoms were not diagnostic of a permanent injury or sequelae as a consequence of the accepted injury.

Dr. Prince concluded, based on his review of the medical record and examination findings, that the accepted employment conditions had resolved without residuals or disability. In support of this opinion, he noted the lack of any objective neurological findings and referenced examination findings contained in the medical record. Dr. Prince noted that the changes in reflexes, strength, and sensation were not persistent throughout the medical record and were unassociated with any abnormalities or reported neuronal structures compromise. He opined that no additional medical treatment was required for the accepted employment conditions. Dr. Prince completed a work capacity evaluation (Form OWCP-5c) and reiterated that appellant was capable of returning to her usual job without restrictions.

By notice dated January 16, 2020, OWCP advised appellant that it proposed to terminate her wage-loss compensation and medical benefits based on the report of the IME, Dr. Prince. It found that the special weight of the medical opinion evidence rested with his opinion and afforded appellant 30 days to submit additional evidence or argument if she disagreed with the proposed termination.

In an undated attending physician's report (Form OWCP-20) received on February 20 and 27, 2020, Dr. Krishna diagnosed cervical and lumbosacral disc syndrome, radiculopathy, and post-traumatic headaches and dizziness. He checked a box marked "Yes" in response to the question of whether the diagnosed conditions had been caused or aggravated by the accepted January 27, 2017 employment injury. Dr. Krishna opined that appellant has been totally disabled from work since January 27, 2017 and continues to be totally disabled.

By decision dated March 13, 2020, OWCP terminated appellant's wage-loss compensation and medical benefits, effective March 14, 2020. It found that the opinion of Dr. Prince, the IME, represented the special weight of the evidence and established that she had no further disability or residuals due to her accepted January 27, 2017 employment injury.

On April 16, 2020 appellant requested reconsideration.

By decision dated April 23, 2020, OWCP denied modification.

On May 13 and June 1, 2020 appellant requested reconsideration. In support of her request, she submitted an undated report from Dr. Krishna who opined that appellant's disability had not resolved. Dr. Krishna explained that appellant continued to have neck and lower back complaints of pain and stiffness radiating into her bilateral lower and upper extremities and complaints of dizziness and severe headaches. He opined that appellant remains totally disabled from work due to her diagnoses of migraine headache, cervical radiculopathy, and lumbosacral radiculopathy.

By decision dated June 9, 2020, OWCP denied modification.

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 has disability causally related to his or her federal employment, it may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.⁵ OWCP's 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 disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.⁹ In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist 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.¹⁰

ANALYSIS -- ISSUE 1

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective March 14, 2020 as she no longer had disability or residuals causally related to her accepted January 27, 2017 employment injury.

The Board finds that the special weight of the evidence is represented by the thorough and well-rationalized opinion of Dr. Prince, the IME selected to resolve the conflict in medical

⁴ *D.G.*, Docket No. 19-1259 (issued January 29, 2020); *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).

⁵ *See C.S.*, Docket No. 20-0621 (issued December 22, 2020); *T.K.*, Docket No. 18-1239 (issued May 29, 2019); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

⁶ *D.G.*, *id.*; *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁷ *D.G.*, *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). *Furman G. Peake*, 41 ECAB 361 (1990).

⁸ *D.G.*, *id.*; *A.G.*, *id.*; *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002); *Furman G. Peake*, *id.*

⁹ 5 U.S.C. § 8123(a); *S.R.*, Docket No. 19-1229 (issued May 15, 2020); *L.T.*, Docket No. 18-0797 (issued March 14, 2019).

¹⁰ *S.R.*, *id.*; *D.W.*, Docket No. 18-0123 (issued October 4, 2018).

opinion.¹¹ In his October 30, 2019 report, Dr. Prince found no objective neuroanatomical deficits and no objective evidence of any cranial nerve injury during his examination of appellant. His opinion has reliability, probative value, and convincing quality with respect to whether appellant had further employment-related disability based upon his finding no objective evidence supporting a permanent neurologic injury. Dr. Prince provided a thorough factual and medical history and accurately summarized the relevant medical evidence.¹² He provided rationale for his opinion by explaining that appellant's findings on examination showed no objective evidence of a permanent neurologic injury, neurologic disability, or a permanent neurologic injury as a result of the accepted January 27, 2017 employment injury. Dr. Prince reached a reasoned conclusion regarding appellant's employment-related disability and need for further medical treatment. His opinion, thus, represents the special weight of the evidence and establishes that she had no further disability causally related to her January 27, 2017 employment injury.¹³

The additional evidence submitted prior to OWCP's termination of appellant's compensation is insufficient to overcome the special weight afforded to Dr. Prince as IME. In an undated Form CA-20 received on February 20 and 27, 2020, Dr. Krishna diagnosed post-traumatic headaches and dizziness and he found that appellant was totally disabled. As previously noted, he did not, however, provide a rationalized opinion in this report to explain whether appellant's diagnosed condition were causally to the employment injury and continued disability. The Board has held that a mere conclusion without the necessary rationale as to whether a period of disability is due to an accepted employment injury is insufficient.¹⁴ Additionally, he was on one side of the conflict regarding whether appellant had continued employment-related disability or residuals. Reports from a physician who was on one side of a medical conflict resolved by an IME are generally insufficient to overcome the special weight accorded to the opinion of the IME or to create a new conflict.¹⁵

The Board, therefore, finds that OWCP properly terminated appellant's wage-loss compensation and medical benefits, effective March 14, 2020.¹⁶

LEGAL PRECEDENT -- ISSUE 2

Once OWCP properly terminated compensation benefits, the burden shifts to appellant to establish continuing disability after that date causally related to the accepted injury.¹⁷ To establish

¹¹ *J.N.*, Docket No. 20-1030 (issued November 20, 2020); *R.P.*, Docket No. 19-0057 (issued May 16, 2019).

¹² *J.N.*, *id.*; *M.R.*, Docket No. 19-0518 (issued September 12, 2019); *A.G.*, Docket No. 19-0113 (issued July 12, 2019).

¹³ *J.N.*, *id.*; *A.M.*, Docket No. 18-1243 (issued October 7, 2019). See *J.K.*, Docket No. 18-1250 (issued June 25, 2019).

¹⁴ *J.N.*, *id.*; *A.T.*, Docket No. 19-0410 (issued August 13, 2019); *E.L.*, Docket No. 17-1632 (issued January 3, 2018).

¹⁵ *D.G.*, Docket No. 19-1259 (issued January 29, 2020); *I.J.*, 59 ECAB 408 (2008).

¹⁶ See *J.N.*, *supra* note 11; *R.A.*, Docket No. 17-1472 (issued December 6, 2017); *Sedi L. Graham*, 57 ECAB 494 (2006).

¹⁷ See *J.N.*, *id.*; *S.M.*, Docket No. 18-0673 (issued January 25, 2019); *L.C.*, Docket No. 18-1759 (issued June 26, 2019).

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.¹⁸

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met her burden of proof to establish continuing employment-related disability or residuals on or after March 14, 2020.

Subsequent to the termination of her wage-loss compensation and medical benefits, appellant submitted an undated report from Dr. Krishna opining that appellant's accepted employment conditions had not resolved and that she continued to be totally disabled. Dr. Krishna did not, however, provide rationale for his causation finding and disability determination and, thus, his opinion is of little probative value.¹⁹ Further, as discussed, the Board has long held that reports from a physician who was on one side of a medical conflict resolved by an IME are generally insufficient to overcome the special weight accorded to the report of the IME or to create a new conflict.²⁰ The Board finds that as Dr. Krishna was on one side of the conflict resolved by Dr. Prince, his additional report is of insufficient weight to overcome the special weight accorded to the IME or to create a new medical conflict.²¹ The Board thus finds that appellant has not established continuing employment-related disability or residuals on or after March 14, 2020.²²

CONCLUSION

The Board finds that OWCP properly terminated appellant's wage-loss compensation and medical benefits, effective March 14, 2020, as she no longer had disability or residuals causally related to her accepted January 27, 2017 employment injury. The Board further finds that she has not met her burden of proof to establish continuing employment-related disability or residuals on or after March 14, 2020.

¹⁸ *Id.*

¹⁹ *A.T.*, Docket No. 20-0334 (issued October 8, 2020) (a medical report is of limited probative value on a given medical issue if it contains a medical opinion which is unsupported by medical rationale).

²⁰ *See J.N., supra* note 11; *R.B.*, Docket No. 16-1481 (issued May 2, 2017).

²¹ *See J.N., id.*; *G.T.*, Docket No. 17-1959 (issued June 22, 2018); *D.G.*, Docket No. 17-0608 (issued March 19, 2018).

²² *Id.*

ORDER

IT IS HEREBY ORDERED THAT the June 9, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 1, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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