

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

J.N., Appellant

and

**DEPARTMENT OF HOMELAND
SECURITY, U.S. CUSTOMS & BORDER
PROTECTION, NEWARK LIBERTY
INTERNATIONAL AIRPORT,
Newark, NJ, Employer**

**Docket No. 22-0682
Issued: December 6, 2022**

Appearances:
Appellant, pro se
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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 30, 2022 appellant filed a timely appeal from an October 7, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective March 9, 2021, as he no longer had

¹ 5 U.S.C. § 8101 *et seq.*

disability or residuals causally related to his accepted July 14, 1992 employment injury; and (2) whether appellant has met his burden of proof to establish continuing disability or residuals on or after March 9, 2021 causally related to the accepted July 14, 1992 employment injury.

FACTUAL HISTORY

On August 3, 1992 appellant, then a 35-year-old customs inspector, filed a traumatic injury claim (Form CA-1) alleging that on July 14, 1992 he suffered injuries when his left arm was struck by hard-shell luggage while in the performance of duty. OWCP accepted the claim for contusion of left elbow and forearm, left lateral epicondylitis, mononeuritis of the left upper limb, and nerve injury to the left shoulder. It paid appellant wage-loss compensation on the periodic rolls as of June 16, 2002.

On August 20, 2020 OWCP referred appellant, along with the medical record and a statement of accepted facts (SOAF), to Dr. Stanley Askin, a Board-certified orthopedic surgeon, for a second opinion evaluation regarding the status of his accepted conditions and current work restrictions.

In his September 11, 2020 report, Dr. Askin noted his review of the medical record SOAF. He noted that, while appellant reported that he had undergone 17 surgical procedures for his accepted employment injury, “the records sent for my review were not complete other than as summarized by [appellant’s treating physician].” Dr. Askin indicated that on physical examination, appellant had a visible edematous right hand as well as surgical scars at the right lateral epicondyle, the right radial tunnel, the right carpal tunnel, the dorsal aspect of the right wrist, the dorsal aspect of the left thumb, the radial aspect of the left wrist, the radial tunnel at the left carpal tunnel and at the left lateral epicondylar. He provided examination findings of both the upper and lower extremities. Dr. Askin noted that while 180 degrees of forward flexion and abduction of the shoulder were expected, appellant had 70 degrees of left shoulder flexion and abduction, but that he did not have a frozen shoulder. Appellant’s bilateral elbow flexions were limited to 120 degrees, while 140 degrees would be expected. He had bilateral wrist dorsiflexion and palmar flexion of 20 degrees; however, his left thumb motion was from 5 degrees of hyperflexion to 0 degrees with the metacarpophalangeal joint fused at approximately 20 degrees. Dr. Askin opined that there was no objective manifestation of the original injury and appellant’s subjective complaints did not correspond with the physical findings with regards to his accepted work injury. He noted that he had reviewed magnetic resonance imaging (MRI) scans of appellant’s knees and right wrist, but he indicated that those conditions were not part of the accepted work injury. Dr. Askin also indicated that he could offer no opinion regarding appellant’s psychologic or psychiatric dimension of his presentation. He opined that appellant has had sufficient convalescence and treatments to adequately address the accepted work conditions of contusion of the left elbow and forearm, left lateral epicondylitis, mononeuritis of the left upper limb and nerve injury to the left shoulder. With regard to lateral epicondylitis, Dr. Askin explained that the medical past practice was to perform surgical procedures if cortisone injections were not effective, but current medical understanding was that lateral epicondylitis was a spontaneously resolving process that did not require invasive treatment. He opined that there was no justification for any additional treatment for the work-related injury. Dr. Askin also opined that appellant did not have the physical wherewithal to engage in sedentary employment due to his general health situation and the fact that he had so many unnecessary surgeries which were not a consequence of

his work injury. In a September 11, 2020 work capacity evaluation (Form OWCP-5c), he opined that appellant had reached maximum medical improvement regarding his accepted work-related conditions and was capable of performing his usual job without restrictions. Dr. Askin noted, however, that appellant's general health issues were limiting.

In an October 21, 2020 letter, OWCP requested that Dr. Askin clarify his opinion on appellant's work capacity.

In a January 12, 2021 addendum, Dr. Askin indicated that he had observed that appellant had significant general health issues but had fully recovered from his accepted work injury. He noted that there was no objective finding of full recovery, but rather the absence of objective findings consistent with the accepted injury. As appellant fully recovered from his accepted work injury, Dr. Askin opined that there was no work-related reason to prevent him from returning to his date-of-injury position. He noted, however, that appellant's general health issues made working, even in a sedentary capacity, not a viable option.

On February 5, 2021 OWCP issued a notice proposing to terminate appellant's wage-loss compensation and medical benefits, as the evidence of record, as represented by Dr. Askin's September 11, 2020 and January 12, 2021 reports, established that he no longer had employment-related residuals or disability due to his accepted work-related conditions. It afforded him 30 days to submit additional evidence or argument in writing if he disagreed with the proposed termination of benefits.

In a February 15, 2021 letter, Dr. Ludmila Ridlovsky, an internist, indicated that appellant had been under her care since 2009. She disagreed with Dr. Askin's opinion that appellant had fully recovered from the work injury, noting that appellant's pain and issues in his arms were a direct consequence from the work injury. Dr. Ridlovsky noted that 28 years ago appellant underwent surgery on his elbow and forearms, which was recommended, and he continued to suffer from nerve damage. She also opined that the lymph edema of the left arm and hand as well as the subsequent nerve damage to the elbow and forearm, including the nerves in the hand and thumb, resulted from the work injury. Dr. Ridlovsky further opined that appellant's right arm suffered from consequential injuries due to the long period of overuse of the right arm due to the loss of use of his left arm. She indicated that appellant was also prescribed heavy duty narcotics during the time of his injury and became dependent on such and was seeking further medical treatment to keep from having withdrawal symptoms. Dr. Ridlovsky also opined that appellant's post-traumatic stress disorder (PTSD) and depression and subsequent dependence on narcotics were directly related to the work injury. She also noted that appellant additionally suffered from a heart condition, neuropathy, arthritis of chronic obstructive pulmonary disease (COPD), which were not work related.

By decision dated March 9, 2021, OWCP terminated appellant's wage-loss compensation and medical benefits, effective March 9, 2021. It found that the weight of the medical evidence rested with Dr. Askin's September 9, 2020 and January 12, 2021 opinions that appellant did not have disability or residuals due to the employment injury.

In a March 22, 2021 letter, appellant requested reconsideration. In May 31 and July 5, 2021 statements, he noted the history of his work injury and the medical treatments he received.

Appellant indicated that he had major depression and major affective disorder and had been receiving psychiatric treatment as a result of his July 14, 1992 work injury. He set forth his disagreement with Dr. Askin's September 11, 2020 medical report and argued that OWCP should refer his case to an impartial medical examiner due to a conflict of medical opinion.

In an April 26, 2021 report, Dr. Ridlovsky summarized the medical treatment appellant received for his left arm and elbow conditions, his consequential right arm/hand conditions and his psychiatric conditions. She opined that those conditions were due to the July 14, 1992 work injury and rendered appellant permanently disabled.

The record also contains a March 8, 2021 employing establishment physician's review of appellant's case, wherein he agreed with the conclusions of OWCP's second opinion physician.

In a May 25, 2021 medical report, Dr. Steven J. Lee, a Board-certified hand surgeon, provided assessments of right wrist pain and rupture of scapholunate ligament of right wrist. He indicated that he could not offer an opinion on causal relation to appellant's 1992 work injury as the case was 20 years old and he was not involved throughout the entire treatment.

By decision dated October 7, 2021, OWCP denied modification of its March 9, 2021 decision.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of justifying termination or modification of an employee's benefits.² It may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.³ OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁵ 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.⁶

² See *C.C.*, Docket No. 19-1062 (issued February 6, 2020); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

³ *A.G.*, Docket No. 18-0749 (issued November 7, 2018); see *I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

⁴ *R.R.*, Docket No. 19-0173 (issued May 2, 2019); *Del K. Rykert*, 40 ECAB 284 (1988).

⁵ *L.W.*, Docket No. 18-1372 (issued February 27, 2019); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁶ *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *A.P.*, Docket No. 08-1822 (issued August 5, 2009).

ANALYSIS -- ISSUE 1

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective March 9, 2021.

OWCP referred appellant to Dr. Askin for a second opinion evaluation to determine the status of appellant's accepted conditions and his work capacity. In reports dated September 11, 2020 and January 12, 2021, Dr. Askin noted his review of the medical record and the SOAF, and provided examination findings. With regard to the accepted work-related conditions, he opined that appellant had fully recovered, that no further or ongoing medical care was warranted, that appellant did not have any residuals of the accepted conditions, and that appellant was able to return to his full-time regular duties with no restrictions. Dr. Askin opined that appellant was disabled from work due to nonwork-related medical conditions.

While he concluded that appellant no longer had residuals of the accepted conditions, Dr. Askin noted that "the records sent for my review were not complete" and he noted that he had reviewed MRI scans of appellant's knees and right wrist, for which there were no accepted conditions in the claim.

In a January 12, 2021 addendum, Dr. Askin noted that there was no objective finding of full recovery, but rather the absence of objective findings consistent with the accepted injury.

The Board has held that the weight of a medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested, and the medical rationale expressed in support of stated conclusions.⁷ As the record provided to Dr. Askin was incomplete, the Board finds that Dr. Askin's opinion is insufficient to carry the weight of the medical evidence.⁸ Therefore, OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective March 9, 2021.⁹

CONCLUSION

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective March 9, 2021.

⁷ *G.B.*, Docket No. 20-0750 (issued October 27, 2020); *A.R.*, Docket No. 20-0335 (issued August 7, 2020).

⁸ *See C.W.*, Docket No. 20-1339 (issued September 15, 2021); *G.Y.*, Docket No. 19-1683 (issued March 16, 2021); *M.R.*, Docket No. 17-0634 (issued July 24, 2018).

⁹ Given the disposition of issue 1, issue 2 is moot.

ORDER

IT IS HEREBY ORDERED THAT the October 7, 2021 decision of the Office of Workers' Compensation Programs is reversed.

Issued: December 6, 2022
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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