

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

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**K.R., Appellant** )

**and** )

**U.S. POSTAL SERVICE, POST OFFICE,** )  
**Lansdowne, PA, Employer** )  
\_\_\_\_\_ )

**Docket No. 22-0019  
Issued: July 11, 2022**

*Appearances:*

*Michael D. Overman, Esq., for the appellant*<sup>1</sup>  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On October 5, 2021 appellant, through counsel, filed a timely appeal from an April 21, 2021 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.<sup>3</sup>

<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.*

<sup>3</sup> The Board notes that, following the April 21, 2021 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 November 8, 2020, as he no longer had disability or residuals causally related to the accepted February 13, 2019 employment injury; and (2) whether appellant has met his burden of proof to establish continuing disability or residuals on or after November 8, 2020 causally related to his accepted February 13, 2019 employment injury.

## **FACTUAL HISTORY**

On February 13, 2019 appellant, then a 56-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date he injured his left elbow when he struck his arm on a metal pole next to the ramp while trying to turn a hamper in the performance of duty. OWCP accepted the claim for left elbow contusion and strain of other extensor muscle, fascia, and tendon at forearm level, left arm. It paid appellant wage-loss compensation on the supplemental compensation rolls, effective April 1, 2019, and on the periodic compensation rolls, effective March 1, 2020.

On October 18, 2019 OWCP referred appellant to Dr. Noubar A. Didizian, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine whether appellant's accepted conditions had resolved, and whether any other diagnoses should be accepted due to the February 13, 2019 employment injury.

In a report dated November 7, 2019, Dr. Didizian related the history of appellant's employment injury, and medical treatment. He noted his review of the statement of accepted facts (SOAF) and appellant's accepted left elbow diagnoses. Dr. Didizian also noted that on the date of injury appellant was working part-time limited duty due to a foot injury. He related that appellant had reported a history of preexisting left elbow injury at the age of 7, when the left elbow was dislocated and reduced. Dr. Didizian explained that appellant's magnetic resonance imaging (MRI) scan findings of loose body, avulsion fracture, and old chronic spurs were long-term findings following his elbow dislocation at age 7. He concluded that appellant's current complaints and findings were related to his chronic injury, not his February 13, 2019 acute employment injury.

In a May 28, 2020 report, Dr. David C. Raab, an osteopath Board-certified in orthopedic surgery, noted appellant's history regarding the employment injury and that appellant was not cleared for left elbow surgery due to new diagnosis of diabetes. He provided examination findings of the left elbow, noting mild swelling, moderate tenderness of lateral epicondyle and over the olecranon, and limited range of motion. Dr. Raab noted that the testing was limited due to pain. He diagnosed partial tear of common extensor tendon of elbow, loose body in left elbow, and left elbow arthritis. Dr. Raab referred appellant to physical therapy. He also released him to sedentary duty with no use of the left arm.

On August 3, 2020 OWCP referred appellant along with a SOAF for a second opinion evaluation with Dr. Kevin F. Hanley, a Board-certified orthopedic surgeon, to determine the status of his accepted employment-related conditions and whether appellant had any additional work-related conditions. The SOAF noted the accepted conditions of left elbow contusion and strain of

other extensor muscle, fascia and tendon at forearm level, left arm, and noted that appellant was working in a part-time, limited-duty capacity at the time of injury.<sup>4</sup>

In an August 21, 2020 report, Dr. Hanley noted the SOAF, appellant's history of injury and medical treatment. He indicated that, because of previous injuries, appellant was working limited duties four hours a day with marked restrictions at the time of injury. Dr. Hanley also noted that appellant had an injury to the left elbow as a child, most likely prior to epiphyseal closure, and that the abnormalities of the lateral aspect of the elbow noted on emergency room x-rays were consistent with an old avulsion-type fracture or possibly a physeal injury. Thus, from an anatomic standpoint, he indicated that appellant did not have a normal elbow at the time of the February 13, 2019 injury and that this abnormality made interpretation of subsequent imaging studies difficult. Dr. Hanley further noted that appellant had disengaged from all intervention, in hopes that a surgical intervention would solve his elbow problems. In the meantime, he opined that appellant has developed limited motion of the elbow and increasing pain to even minimal activity. Appellant's physical examination revealed full pronation and supination, but about 10 degrees short of full extension with pain complaints. Dr. Hanley noted no obvious atrophy about the extensor or flexor muscles of the forearm and that appellant had a reasonable amount of grip strength, despite pain complaints. He indicated there was no deformity of the elbow and that appellant withdrew his elbow when he touched the olecranon, which had not been part of the injury at any point. Dr. Hanley reported that the magnetic resonance imaging (MRI) scans showed a fragment along the lateral epicondyle which was extraarticular and not representative of a loose body. He further noted that March 4 and June 11, 2019 physical examinations of record by appellant's treating orthopedic surgeon were absolutely normal, other than tenderness over the lateral epicondyle and that the degree of tenderness was nowhere near what appellant suggested he has. Dr. Hanley indicated that appellant had an affected allodynia as he could hardly touch the lateral elbow. He noted objective findings of limitation of elbow motion in full extension and local tenderness over the elbow with subjective reports of intense pain that limited use of the arm almost to nothing. Dr. Hanley provided diagnoses of left elbow contusion and tendinosis common extensor tendon, left elbow. He indicated that there was no relationship or correlation between the objective findings and the subjective complaints, noting that the history of injury did not correlate. Dr. Hanley opined that appellant was engaging in symptom magnification. He also opined that the work-related conditions resolved, and no further medical treatment was needed. Dr. Hanley indicated that appellant was not a surgical candidate, and that surgical intervention would have no benefit and may make him worse. He further opined that appellant was capable of performing the limited-duty job with restricted weightbearing he was doing at the time of the February 13, 2019 injury with no restrictions of the upper extremity. Dr. Hanley completed a work capacity evaluation (Form OWCP-5c) noting that appellant could perform the restricted-duty position that he was performing at the time of the injury.

On September 17, 2020 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits, as the evidence of record established that he no longer had employment-related residuals or disability due to his accepted work-related conditions. It afforded him 30 days

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<sup>4</sup> The SOAF also noted appellant's other OWCP cases, including OWCP File No. xxxxxx649, for an accepted strain of muscle(s) and tendon(s) of the rotator cuff of left shoulder due to a January 6, 2018 employment injury.

to submit additional evidence or argument, in writing, if he disagreed with the proposed termination of benefits.

In a September 23, 2020 letter, appellant, through counsel, argued there was an outstanding conflict in medical opinion evidence between Dr. Raab and Dr. Hanley. Appellant also submitted an October 2, 2020 letter disagreeing with the proposed termination.

In September 29, 2020 prescription notes, Dr. Raab kept appellant off work and prescribed a course of physical therapy.

By decision dated October 29, 2020, OWCP terminated appellant's wage-loss compensation and medical benefits effective November 8, 2020. It found that the weight of the medical evidence rested with Dr. Hanley's August 21, 2020 opinion that he did not have any disability or residuals causally related to the accepted February 13, 2019 employment injury.

On November 4, 2020 appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review. A telephonic hearing was held on February 4, 2021.

In a September 29, 2020 narrative report, Dr. Raab noted the history of appellant's February 13, 2019 employment injury and his medical treatment following the employment injury. He noted that appellant reported continued pain in left elbow with restricted range of motion and intermittent swelling and weakness. Appellant also indicated that he did not feel that he could return to his modified work. Examination findings of the left elbow were provided. Dr. Raab diagnosed arthritis of the left elbow and partial tear of common extensor tendon of the elbow for which he recommended that appellant remain out of work and resume physical therapy. In a note dated November 5, 2020, he related that appellant could return to work four hours a day. In a November 10, 2020 report, Dr. Raab related that appellant presented with an elbow problem. He also noted "this condition occurred following a specific injury," which he related occurred at work on February 13, 2019. Dr. Raab did not note appellant's history of a preexisting left elbow condition. He diagnosed arthritis of left elbow and opined that appellant could continue current work status.

By decision dated April 21, 2021, an OWCP hearing representative affirmed OWCP's October 29, 2020 decision. She found that Dr. Raab had not provided sufficient rationale to create a conflict of medical opinion.

### **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.<sup>5</sup> It may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the

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<sup>5</sup> *C.C.*, Docket No. 19-1062 (issued February 5, 2020); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

employment.<sup>6</sup> OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>7</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.<sup>8</sup> 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.<sup>9</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective November 8, 2020, as he no longer had disability or residuals causally related to the accepted February 13, 2019 employment injury.

OWCP based its decision to terminate appellant's wage-loss compensation and medical benefits on the August 21, 2020 opinion of Dr. Hanley, OWCP's second opinion physician, who found that the accepted conditions of left elbow contusion and strain of other extensor muscle, fascia and tendon at forearm level, left arm had resolved with no residuals and no further medical treatment, including surgical intervention, was needed. Dr. Hanley further opined that appellant was capable of performing the limited-duty job with restricted weightbearing he was doing at the time of the February 13, 2019 injury with no restrictions of the upper extremity. In his August 21, 2020 report, he described the February 13, 2019 employment injury, noting the accepted conditions as set forth in the SOAF. Dr. Hanley further noted that at the time of injury appellant's elbow was not normal due to a prior childhood injury. He related appellant's physical examination findings and reviewed diagnostic testing, specifically noting that the fragment along the lateral epicondyle which was extraarticular and not representative of a loose body. Dr. Hanley found objective findings of elbow motion limitation in full extension and local tenderness over the elbow with subjective reports of intense pain that limited use of the arm almost to nothing. He noted appellant's accepted diagnoses, but opined that there was no relationship or correlation between the objective findings and the history of injury and appellant's subjective complaints. Dr. Hanley further noted that appellant was engaged in symptom magnification.

The factors that comprise the evaluation of medical opinion evidence include the opportunity for and thoroughness of physical examination, the accuracy, or completeness of the

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<sup>6</sup> See *T.M.*, Docket No. 19-1058 (issued March 30, 2021); *G.T.*, Docket No. 18-01302 (issued October 22, 2019); *A.G.*, Docket No. 18-0749 (issued November 7, 2018); *Elsie L. Price*, 54 ECAB 734 (2003).

<sup>7</sup> *R.R.*, Docket No. 19-0173 (issued May 2, 2019); *Del K. Rykert*, 40 ECAB 284 (1988).

<sup>8</sup> *L.W.*, Docket No. 18-1372 (issued February 27, 2019); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

<sup>9</sup> See *T.M.*, *supra* note 6; *A.M.*, Docket No. 18-1243 (issued October 7, 2019); *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *A.P.*, Docket No. 08-1822 (issued August 5, 2009).

physician's knowledge of the facts and medical history, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.<sup>10</sup>

The Board finds that OWCP properly determined that Dr. Hanley's opinion constitutes the weight of the medical opinion evidence. Dr. Hanley based his opinion on a proper factual and medical history and physical examination findings. He explained that appellant had chronic objective findings from his prior left elbow injury at age 7. Dr. Hanley noted that appellant's physical examination indicated subjective findings, which did not correlate with objective findings and the history of appellant's employment injury. He further opined that appellant could resume the limited-duty job with restricted weightbearing he was performing at the time of injury with no restrictions of the upper extremity. The Board finds that Dr. Hanley's opinion is sufficiently probative, rationalized, and based upon a proper factual background<sup>11</sup> and it represents the weight of the medical evidence at the time of the October 29, 2020 termination decision. Accordingly, OWCP properly relied on his second opinion report in terminating appellant's wage-loss compensation and medical benefits for the February 13, 2019 employment injury.<sup>12</sup>

Dr. Raab, in his May 28, 2020 report, diagnosed partial tear of common extensor tendon of elbow, loose body in left elbow, and left elbow arthritis. He referred appellant to physical therapy and released him to sedentary duty, with no use of the left arm. In a note dated September 29, 2020, Dr. Raab kept appellant off work. However, he did not address in either report whether appellant continued to have residuals or disability due to his employment-related left upper extremity conditions, based upon objective medical findings. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value.<sup>13</sup>

As the reports from Dr. Raab are insufficient to overcome the weight of the medical evidence accorded to Dr. Hanley's second opinion, or to create a conflict of medical opinion, the Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective November 8, 2020.

### **LEGAL PRECEDENT -- ISSUE 2**

When OWCP properly terminates wage-loss compensation and medical benefits, the burden shifts to appellant to establish continuing disability or residuals, on or after that date, causally related to the accepted employment injury.<sup>14</sup> To establish causal relationship between

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<sup>10</sup> *B.C.*, Docket No. 16-0978 (issued November 21, 2016); *Nicolette R. Kelstrom*, 54 ECAB 570 (2003); *Anna M. Delaney*, 53 ECAB 384 (2002); *see also G.I.*, Docket No. 14-1857 (issued September 9, 2015).

<sup>11</sup> *B.C., id.; A.B.*, Docket No. 16-0480 (issued August 29, 2016).

<sup>12</sup> *J.T.*, Docket No. 20-1470 (issued October 8, 2021); *C.C.*, *supra* note 5; *S.M.*, Docket No. 18-0673 (issued January 25, 2019); *see also A.F.*, Docket No. 16-0393 (issued June 24, 2016).

<sup>13</sup> *A.M.*, Docket No. 18-0562 (issued January 23, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018); *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>14</sup> *E.J.*, Docket No. 20-0013 (issued November 19, 2020); *B.A.*, Docket No. 17-1471 (issued July 27, 2018); *Manuel Gill*, 52 ECAB 282 (2001).

continuing residuals and/or disability and the accepted employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background supporting such causal relationship.<sup>15</sup>

### ANALYSIS -- ISSUE 2

The Board finds that appellant has not met his burden of proof to establish continuing disability or residuals on or after November 8, 2020 causally related to his accepted February 13, 2019 employment injury.

Following the termination of his wage-loss compensation and medical benefits, effective November 8, 2020, appellant submitted additional reports from Dr. Raab. In a September 29 narrative report and a November 10, 2020 report, Dr. Raab noted the history of appellant's February 13, 2019 employment injury and his complaints of continued pain in the left elbow. He provided examination findings regarding the left elbow. In his September 29, 2020 report, Dr. Raab diagnosed arthritis of the left elbow and partial tear of common extensor tendon of the elbow for which he recommended that appellant remain out of work and resume physical therapy. On November 5, 2020 he opined that appellant could return to work four hours a day. In his November 10, 2020 report, Dr. Raab diagnosed arthritis of left elbow and opined that appellant continue current work status. However, Dr. Raab did not offer an opinion regarding whether appellant had continuing residuals or disability on or after November 8, 2020 due to the accepted employment injury.<sup>16</sup> As such, Dr. Raab's reports are insufficient to meet appellant's burden of proof.

As appellant has not submitted rationalized medical evidence establishing that he had continuing employment-related disability or residuals, on or after November 8, 2020, due to the accepted employment injury, the Board finds that he has not met his 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 OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective November 8, 2020, as he no longer had disability or residuals causally related to the accepted February 13, 2019 employment injury. The Board further finds that appellant has not met his burden of proof to establish continuing disability or residuals on or after November 8, 2020, causally related to his accepted February 13, 2019 employment injury.

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<sup>15</sup> *C.L.*, Docket No. 18-1379 (issued February 3, 2019); *T.M.*, Docket No. 08-0975 (issued February 6, 2009).

<sup>16</sup> *Supra* note 14.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 21, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 11, 2022  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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