

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

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| M.B., Appellant |) | |
| |) | |
| and |) | Docket No. 22-1180 |
| |) | Issued: August 17, 2023 |
| U.S. POSTAL SERVICE, LANDSDOWNE POST |) | |
| OFFICE, Lansdowne, PA, Employer |) | |
| |) | |

Appearances: *Case Submitted on the Record*
Michael D. Overman, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On August 5, 2022 appellant, through counsel, filed a timely appeal from February 24 and May 24, 2022 merit decisions 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.

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish a recurrence of disability beginning January 19, 2021 causally related to her accepted May 11, 2018 employment injury; (2) whether appellant has met her burden of proof to expand the acceptance of her claim to include additional conditions causally related to or as a consequence of her accepted

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 a 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.*

May 11, 2018 employment injury; (3) whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective December 2, 2021 as she no longer had residuals or disability causally related to her accepted May 11, 2018 employment injury; and (4) whether appellant has met her burden of proof to establish continuing employment-related disability or residuals on or after December 2, 2021 due to her accepted May 11, 2018 employment injury.

FACTUAL HISTORY

On May 11, 2018 appellant, then a 29-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on that date she twisted her ankle and strained the top of her foot when a dog charged causing her to fall backward while in the performance of duty. She stopped work on May 11, 2018 and returned to her usual full-time employment on February 25, 2019. OWCP accepted the claim for a right ankle sprain.

A magnetic resonance imaging (MRI) scan of the right foot, obtained on June 5, 2018 demonstrated a degenerative subcortical cyst at the first metatarsal head, but no acute osseous abnormality.

In duty status reports (Form CA-17) dated February 25 through September 13, 2019, Dr. Martin Pieretti, an osteopath, advised that appellant could perform her usual employment without restriction.

On September 17, 2019 appellant filed a notice of recurrence (Form CA-2a) on April 4, 2019 alleging the need for medical treatment causally related to her May 11, 2018 employment injury. The employing establishment indicated on the form that after she returned to work it had adjusted her schedule and provided a modified assignment.

In Form CA-17 reports beginning September 26, 2019, a nurse practitioner indicated that appellant could work with restrictions, including walking no more than three hours per day. In an April 15, 2020 Form CA-17, Dr. Shawn Puri, a Board-certified anesthesiologist, indicated that she could walk for two hours per day.

In a report dated May 4, 2020, Dr. Renata Milman, a podiatrist, obtained a history of appellant experiencing right lower extremity pain after she fell running from a dog on March 11, 2018 and twisted her ankle. She opined that appellant could not work over two hours at a time. On examination Dr. Milman found ligamentous laxity at the anterolateral ankle and a positive Tinel's sign. She diagnosed a right ankle sprain and synovitis.

An MRI scan of the right ankle, obtained on June 2, 2020 demonstrated moderate posterior tibialis tendinosis with low-grade interstitial tearing at the medial malleolus.

On January 13, 2021 OWCP referred appellant to Dr. Noubar A. Didizian, a Board-certified orthopedic surgeon, for a second opinion examination. It requested that he address appellant's current diagnoses and level of disability due to her May 11, 2018 employment injury.

In a January 14, 2021 Form CA-17, Dr. Milman opined that appellant could work with restrictions, including walking and standing for two hours per day.

On January 19, 2021 the employing establishment offered appellant a modified position performing her full duties as a letter carrier for eight hours per day. It indicated that the position was temporary based on current medical restrictions, that the trays and the weight of the parcels would be under 70 pounds, and that the eight-hour work limit would be followed.

In a report dated January 26, 2021, Dr. Didizian discussed appellant's history of injury and current complaints of pain in her right ankle with intermittent swelling. On examination, he measured range of motion of the ankle and found no effusion, synovitis, crepitation, or laxity in the medial and lateral collateral ligaments. Dr. Didizian noted that a June 2, 2020 MRI scan did not show the previously noted talar dome lesion, but revealed "moderate posterior tibial tendinosis with low-grade interstitial tear at the level of medial malleolus." He indicated that the accepted injury was a sprain of a ligament of the right ankle. Dr. Didizian opined that appellant had subjective complaints, but no objective findings on examination. He diagnosed a sprain of the right ankle ligament that had resolved and asserted that she could resume her regular employment. In a work capacity evaluation (Form OWCP-5c) of even date, Dr. Didizian found that appellant could work without restrictions.

On February 2, 2021 Dr. Milman related that she had treated appellant since May 2020 for right lower extremity pain. She recounted appellant's history of a May 11, 2018 injury when she twisted her right ankle running from a dog. Dr. Milman noted that appellant had previously fractured her fifth metatarsal fracture in February 2017. She related, "[Appellant] sustained an injury to her right foot and ankle and is diagnosed with osteoarthritis. [She] is also noted to have synovitis of her right ankle and right subtalar joint as a result of her injury and her altered gait." Dr. Milman attributed appellant's moderate-to-severe pain in her right foot and ankle to her May 11, 2018 ankle injury. She opined that she would likely require surgical treatment and continued care. Dr. Milman found that appellant could not walk or sit and drive for prolonged periods.

On February 26, 2021 counsel requested expansion of the claim based on Dr. Milman's February 2, 2021 report.

On March 3, 2021 appellant filed a claim for compensation (Form CA-7) for disability from work for the period January 18 to February 26, 2021 due to her accepted employment injury.

In a development letter dated March 9, 2021, OWCP advised appellant that its records indicated that she had returned to her usual employment on February 25, 2019 and had worked until January 19, 2021. It informed her of the definition of a recurrence of disability and requested additional factual and medical evidence. OWCP afforded appellant 30 days to submit the requested evidence.

In a statement dated March 30, 2021, appellant related that she had resumed work on February 25, 2019 without restrictions. She advised that healthcare providers limited her walking to seven hours per day beginning April 8, 2019, three hours per day beginning September 26, 2019, and two hours per day beginning April 15, 2020. Appellant asserted that she had been on a walking restriction since September 26, 2019, due to her increased pain and swelling.

On April 2 and May 18, 2021 appellant filed a Form CA-7 requesting compensation for disability from work for the period February 27 to March 26, 2021.

OWCP determined that a conflict in medical opinion existed between Dr. Didizian and Dr. Milman regarding whether appellant's ankle sprain had resolved, whether the claim should be expanded based on the additional conditions diagnosed by Dr. Millman on February 2, 2021 and whether the proposed ankle arthroscopy and synovectomy were medically necessary due to appellant's accepted employment injury. It referred her to Dr. Andrew J. Collier, Jr. a Board-certified orthopedic surgeon, for an impartial medical examination. OWCP provided a statement of accepted facts (SOAF) that indicated that appellant had stopped work on May 11, 2018 and had resumed her usual employment on February 25, 2019.

Subsequently, OWCP received a January 19, 2021 Form CA-2a from appellant advising that she had sustained a recurrence of disability on April 1, 2019 due to her accepted employment injury. Appellant noted that she had stopped working following the recurrence of disability on January 19, 2021. She asserted that she had experienced increased ankle pain after working full duty for four months. The employing establishment indicated that it had accommodated her injury-related limitations.

In an April 30, 2021 Form CA-17, Dr. Milman provided work restrictions. In an accompanying report, she diagnosed osteoarthritis of the right foot and ankle, synovitis, and acute right ankle pain. Dr. Milman recommended an arthroscopy as a diagnostic tool.

In a development letter dated May 17, 2021, OWCP advised appellant of the definition of a recurrence of disability and the deficiencies of her claim. It requested that she provide additional factual and medical evidence supporting that her accepted condition worsened such that she was disabled from employment. OWCP afforded appellant 30 days to respond to the request.

In a report dated May 19, 2021, Dr. Collier reviewed the history of appellant's May 11, 2018 employment injury and her right fifth metatarsal fracture in 2017. He noted that she had returned to her full-time date-of-injury job on February 25, 2019 but had experienced increased symptoms beginning April 1, 2019. Dr. Collier indicated that appellant currently worked with restrictions of casing mail for 1 hour per day and delivering mail for 40 minutes per day. On examination, he found no synovitis, effusion, erythema of either ankle, and equal range of motion bilaterally. Dr. Collier further found mild tenderness of the right ankle over the midportion of the talus joint and over the peroneal tendons with eversion and external rotation. He provided his review of the medical evidence and opined that appellant had experienced an acute right ankle sprain on May 11, 2018. Dr. Collier noted that an MRI scan showed a five-millimeter osteochondral defect of the midportion of the talus of indeterminate age which might have been related to her injury, but had now healed. He opined that appellant's acute ankle sprain had resolved. Dr. Collier found that she had bilateral planovalgus feet that was either hereditary or acquired. He attributed appellant's peroneal tendinitis to "abutment of the peroneal tendons occasioned by her planovalgus foot." Dr. Collier asserted that a right ankle arthroscopy and synovectomy was neither appropriate nor necessary to treat her ankle injury. He determined that the conditions diagnosed by Dr. Milman in her February 2, 2021 report were unrelated to the accepted ankle sprain and found that appellant required no further care. Dr. Collier related, "[Appellant] has completely recovered from her ankle sprain. Her condition has resolved totally. [Appellant] is presently left with her unrelated bilateral planovalgus feet. Due to the ankle injury, she is capable of returning back to work full time, full duty." He determined, however, that appellant's planovalgus feet with lateral impingement would make prolonged standing, walking, and delivering mail difficult. In a Form OWCP-5c of even date, Dr. Collier found that she could

perform sedentary and light work with restrictions due to her unrelated employment conditions of bilateral planovalgus feet and lateral impingement.

By decision dated August 4, 2021, OWCP found that appellant had not established a recurrence of disability due to her accepted May 11, 2018 employment injury. It noted that, following her injury, she had returned to work on February 25, 2019 and had stopped work on January 19, 2021. OWCP found that the opinion of the impartial medical examiner (IME), Dr. Collier, constituted the special weight of the evidence and established that appellant accepted right ankle sprain had resolved.

On August 5, 2021 OWCP notified appellant of its proposed termination of her compensation and medical benefits as the weight of the evidence established that she no longer had any employment-related residuals or disability due to her accepted May 11, 2018 employment injury. It afforded her 30 days to submit additional evidence or argument if she disagreed with the proposed termination.

On August 10, 2021 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In an August 19, 2021 response to the notice of proposed termination, counsel noted that Dr. Collier had found tenderness over the peroneal tendons of the right ankle that increased with impingement of the tendons. He further questioned why Dr. Collier found appellant's foot problem hereditary without testing the left foot and ankle.

Appellant submitted progress reports from Dr. Milman dated 2020 and 2021.

By decision dated December 2, 2021, OWCP terminated appellant's wage-loss compensation and authorization for medical benefits effective that date as she had no further disability, residuals, or need for medical treatment due to her accepted employment injury.

On December 8, 2021 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review on the December 2, 2021 termination decision.

A telephonic hearing was held on December 10, 2021 regarding the August 4, 2021 decision finding that appellant had not established a recurrence of disability. Appellant described her work injury and advised that she had returned to work with restrictions about a month and a half later. She related that at the time of her January 19, 2021 recurrence of disability she was performing modified employment provided in 2019. On January 19, 2021 appellant's supervisor directed appellant to carry her entire route or leave. Counsel advised that she was alleging a recurrence of disability on January 19, 2021 based on the withdrawal of her limited-duty assignment. Appellant related that her restrictions had changed three times and that she had at one point returned to full duty; however, in April 2019 the pain returned, and her physician provided work restrictions. She asserted that the employing establishment had accommodated her work restrictions until January 19, 2021. Appellant related that she attempted to work in May 2021 for two hours per day. The hearing representative noted that a January 15, 2021 job offer from the employing establishment provided that it was for modified work, but described the duties as those of a full-time regular letter carrier. Counsel contended that the SOAF provided to Dr. Collier indicated that appellant had returned to her usual employment.

Thereafter, OWCP received a report dated October 13, 2021 from Dr. Puri who indicated that, after her May 11, 2018 employment injury, appellant had developed pain in her right ankle and hip pain, and sacroiliitis due to a gait issue from her right ankle pain. Dr. Puri provided pain management.³ .

In an October 22, 2021 progress report, Dr. Milman diagnosed osteoarthritis of the right ankle and foot.

By decision dated February 24, 2022, OWCP's hearing representative affirmed the August 4, 2021 recurrence of disability decision. He found that Dr. Collier's opinion as an IME represented the special weight of the evidence and established that appellant had not sustained a recurrence of disability on January 19, 2021. The hearing representative further found that while the employing establishment withdrew her modified job on January 19, 2021 her limitations were not employment related and thus she had not established a recurrence of disability. He noted that OWCP, in its August 4, 2021 decision, found that appellant had failed to establish additional employment-related conditions based on Dr. Collier's report.

On March 7, 2022 counsel requested a review of the written record in lieu of an oral hearing.

By decision dated May 24, 2022, OWCP's hearing representative affirmed the December 2, 2021 termination decision.

LEGAL PRECEDENT -- ISSUE 1

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which resulted from a previous compensable injury or illness and without an intervening injury or new exposure in the work environment.⁴ This term also means an inability to work because a light-duty assignment made specifically to accommodate an employee's physical limitations, and which is necessary because of a work-related injury or illness, is withdrawn or altered so that the assignment exceeds the employee's physical limitations. A recurrence does not occur when such withdrawal occurs for reasons of misconduct, nonperformance of job duties, or a reduction-in-force.⁵

OWCP's procedures provide that a recurrence of disability includes a work stoppage caused by a spontaneous material change in the medical condition demonstrated by objective findings. That change must result from a previous injury or occupational illness rather than an intervening injury or new exposure to factors causing the original illness. It does not include a condition that results from a new injury, even if it involves the same part of the body previously injured.⁶

³ Dr. Puri provided a similar report on January 12, 2022.

⁴ 20 C.F.R. § 10.5(x); *J.D.*, Docket No. 18-1533 (issued February 27, 2019).

⁵ *Id.*

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2 (June 2013); *P.R.*, Docket No. 20-0596 (issued October 6, 2020); *F.C.*, Docket No. 18-0334 (issued December 4, 2018).

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of proof to establish by the weight of the substantial, reliable, and probative evidence that the disability for which he or she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, based on a complete and accurate factual and medical history, concludes that, for each period of disability claimed, the disabling condition is causally related to the employment injury, and supports that conclusion with medical reasoning.⁷ Where no such rationale is present, the medical evidence is of diminished probative value.⁸

ANALYSIS -- ISSUE 1

The Board finds that the case is not in posture for decision regarding whether appellant has met her burden of proof to establish a recurrence of disability beginning January 19, 2021 causally related to her accepted May 11, 2018 employment injury.

In its August 4, 2021 and February 24, 2022 decisions, OWCP found that the opinion of Dr. Collier, the IME, represented the special weight of the evidence and established that appellant had not established a recurrence of disability due to her accepted employment injury. It referred her to him on April 29, 2021, to resolve a conflict regarding whether she had continued residuals of her accepted right ankle sprain, whether she had additional employment-related conditions, and whether she required an ankle synovectomy due to her accepted employment injury. After OWCP's referral of appellant to Dr. Collier, OWCP received her Form CA-2a alleging a recurrence of disability. Appellant indicated that the recurrence of disability began on April 1, 2019, but that she stopped work on January 19, 2021.

At the time of OWCP's referral of appellant to Dr. Collier, there was no conflict in medical opinion regarding the issue of whether she had sustained an employment-related recurrence of disability. Dr. Milman, appellant's physician, advised in a January 14, 2017 Form CA-17 that she could work with restrictions of no walking or standing more than two hours per day. In a February 2, 2021 report, appellant observed synovitis of the right ankle and subtalar joint and moderate-to-severe ankle pain due to the May 11, 2018 employment injury. Dr. Milman opined that she could not work more than two hours and was unable to perform extended sitting, standing, or driving. Dr. Didizian, an OWCP referral physician, opined in a January 26, 2021 report, that appellant could resume work without restrictions, but did not specifically address the issue of whether she had sustained a recurrence of disability beginning January 19, 2021. Consequently, as there was no conflict in medical opinion at the time of OWCP's referral, Dr. Collier's opinion is that of a second opinion physician rather than an IME on this issue.⁹

In a report dated May 19, 2021, Dr. Collier noted that appellant had returned to her usual employment on February 25, 2019, but subsequently began working with restrictions. He opined

⁷ *H.C.*, Docket No. 22-0844 (issued December 5, 2022); *L.O.*, Docket No. 19-0953 (issued October 7, 2019); *J.D.*, Docket No. 18-0616 (issued January 11, 2019).

⁸ *See A.M.*, Docket No. 22-0322 (issued November 17, 2022); *M.G.*, Docket No. 19-0610 (issued September 23, 2019); *G.G.*, Docket No. 18-1788 (issued March 26, 2019).

⁹ *See D.S.*, Docket No. 21-1129 (issued April 19, 2022); *T.C.*, Docket No. 17-1741 (issued October 9, 2018); *R.H.*, Docket No. 17-1477 (issued March 14, 2018); *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

that she had no residuals from her ankle sprain and that her condition had resolved. Dr. Collier, however, failed to address the issue of whether appellant sustained a recurrence of disability such that she was unable to perform her regular work duties after February 25, 2019, or whether she was totally disabled from employment beginning January 19, 2021. His opinion, therefore, is insufficient to resolve the issue.

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.¹⁰ Once it undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.¹¹ As the relevant issue of whether appellant sustained a recurrence of disability beginning January 19, 2021 remains unresolved, the Board finds that the case must be remanded to OWCP.

On remand, OWCP should obtain clarifying information from the employing establishment regarding the dates that appellant performed modified employment following her resumption of work on February 25, 2019. It should then prepare an updated SOAF and obtain a report from a specialist in the appropriate field of medicine to resolve the issue of whether she sustained an employment-related recurrence of disability beginning January 19, 2021 causally related to her accepted May 11, 2018 employment injury. Following this and such other development as deemed necessary, OWCP should issue a *de novo* decision on this issue.

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.¹²

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹³ A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.¹⁴ Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical

¹⁰ See *L.B.*, Docket No. 19-0432 (issued July 23, 2019); *William J. Cantrell*, 34 ECAB 1223 (1983).

¹¹ *Id.*; see also *C.F.*, Docket No. 21-0003 (issued January 21, 2022); *S.A.*, Docket No. 18-1024 (issued March 12, 2020).

¹² *J.R.*, Docket No. 20-0292 (issued June 26, 2020); *W.L.*, Docket No. 17-1965 (issued September 12, 2018); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

¹³ *W.N.*, Docket No. 21-0123 (issued December 29, 2021); *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

¹⁴ *F.A.*, Docket No. 20-1652 (issued May 21, 2021); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

rationale, explaining the nature of the relationship between the diagnosed condition and appellant's employment injury.¹⁵

Section 8123(a) of FECA provides, in pertinent part: "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."¹⁶ This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.¹⁷

ANALYSIS -- ISSUE 2

The Board finds that the case is not in posture for decision regarding whether appellant has met her burden of proof to expand the acceptance of her claim to include additional conditions causally related to or as a consequence of her accepted May 11, 2018 employment injury.

On January 26, 2021 Dr. Didizian, an OWCP referral physician, opined that appellant had subjective complaints unsupported by objective findings and that her right ankle sprain had resolved. In a report dated February 2, 2021, Dr. Milman, appellant's treating physician, opined that appellant had osteoarthritis and synovitis of the right ankle and right subtalar joint due to the accepted employment injury and recommended possible surgery.

OWCP found that a conflict in medical opinion arose between Dr. Milman, appellant's treating physician, and Dr. Didizian, an OWCP referral physician, regarding whether the acceptance of the claim should be expanded to include additional conditions. It referred appellant to Dr. Collier for resolution of the conflict. However, Dr. Didizian did not address the relevant issue of claim expansion. Consequently, as there was no conflict at the time of OWCP's referral of appellant to Dr. Collier, his opinion is that of a second opinion physician rather than an IME on the issue of claim expansion.¹⁸

In a report dated May 19, 2021, Dr. Collier found that appellant had experienced an acute right ankle sprain and a possible osteochondral defect of the midportion of the talus that had healed. He opined that she also had bilateral planovalgus feet either due to heredity or acquired and peroneal tendinitis due to her planovalgus feet. Dr. Collier asserted that the conditions found by Dr. Milman in her February 2, 2021 report were unrelated to the accepted employment injury.

The Board finds that a conflict exists between Dr. Milman and Dr. Collier regarding whether appellant met her burden of proof to expand the acceptance of her claim to include additional conditions causally related to or as a consequence of her accepted employment injury.

¹⁵ *Id.*

¹⁶ 5 U.S.C. § 8123(a).

¹⁷ *K.C.*, Docket No. 19-1251 (issued January 24, 2020); *R.M.*, Docket No. 18-1621 (issued August 23, 2019); *R.C.*, 58 ECAB 238 (2006).

¹⁸ *See supra* note 9; *see also M.W.*, Docket No. 21-0649 (issued December 8, 2022).

Under section 8123(a) of FECA, OWCP must resolve this conflict by referring appellant, together with the case record and a SOAF, to an IME.¹⁹

On remand, OWCP shall refer appellant, along with an updated SOAF, to a specialist in the appropriate field of medicine for an impartial medical examination and a rationalized opinion regarding claim expansion.²⁰ After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision on the issue.

LEGAL PRECEDENT -- ISSUE 3

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.²¹ After it has determined that, an employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.²² Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.²³

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.²⁴ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.²⁵

Where a case is referred to an IME for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.²⁶

ANALYSIS -- ISSUE 3

The Board finds that OWCP improperly terminated appellant's wage-loss compensation and medical benefits, effective December 2, 2021.

As explained above, OWCP undertook development of the medical record to determine whether the acceptance of appellant's claim should be expanded, but has not resolved the issue.

¹⁹ 5 U.S.C. § 8123(a); *see C.L.*, Docket No. 21-0729 (issued December 1, 2022); *T.T.*, Docket No. 19-0544 (issued August 14, 2020).

²⁰ *See M.W.*, *supra* note 18.; *C.H.*, Docket No. 20-0608 (issued April 5, 2021).

²¹ *R.H.*, Docket No. 19-1064 (issued October 9, 2020); *M.M.*, Docket No. 17-1264 (issued December 3, 2018).

²² *A.T.*, Docket No. 20-0334 (issued October 8, 2020); *E.B.*, Docket No. 18-1060 (issued November 1, 2018).

²³ *C.R.*, Docket No. 19-1132 (issued October 1, 2020); *G.H.*, Docket No. 18-0414 (issued November 14, 2018).

²⁴ *E.J.*, Docket No. 20-0013 (issued November 19, 2020); *L.W.*, Docket No. 18-1372 (issued February 27, 2019).

²⁵ *A.J.*, Docket No. 18-1230 (issued June 8, 2020); *R.P.*, Docket No. 18-0900 (issued February 5, 2019).

²⁶ *See S.N.*, Docket No. 21-0070 (issued March 9, 2022); *D.S.*, Docket No. 19-1698 (issued June 18, 2020); *K.C.*, *supra* note 17; *V.K.*, Docket No. 18-1005 (issued February 1, 2019); *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

As the issue of expansion is not in posture for decision, the Board finds that OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits.²⁷

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether appellant has met her burden of proof to establish a recurrence of disability beginning January 19, 2021 causally related to her accepted May 11, 2018 employment injury. The Board further finds that the case is not in posture for decision regarding whether she has met her burden of proof to expand the acceptance of her claim to include additional conditions causally related to or as a consequence of her accepted employment injury. The Board finds that OWCP improperly terminated appellant's wage-loss compensation and medical benefits effective December 2, 2021.²⁸

ORDER

IT IS HEREBY ORDERED THAT the February 24, 2022 decision is set aside and the case is remanded for further proceedings consistent with this decision of the Board. The May 24, 2022 decision of the Office of Workers' Compensation Programs is reversed.

Issued: August 17, 2023
Washington, DC

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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board

²⁷ See *C.S.*, Docket No. 20-0621 (issued December 22, 2020).

²⁸ In light of the Board's disposition of Issues 1, 2, and 3, Issue 4 is rendered moot.