

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

Y.M., Appellant	)	
	)	
and	)	Docket No. 23-0091
	)	Issued: August 4, 2023
U.S. POSTAL SERVICE, JENKINTOWN POST	)	
OFFICE, Jenkintown, PA, Employer	)	
	)	

*Appearances:* *Case Submitted on the Record*  
Alan J. Shapiro, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On October 31, 2022 appellant, through counsel, filed a timely appeal from a July 1, 2022 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.

**ISSUES**

The issues are: (1) whether appellant has met her burden of proof to expand the acceptance of her claim to include a C3-C4 disc herniation condition as causally related to her accepted June 9,

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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.*

2020 employment injury; (2) whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective April 20, 2021, as she no longer had disability or residuals causally related to her accepted June 9, 2020 employment injury; and (3) whether appellant has met her burden of proof to establish continuing disability or residuals on or after April 20, 2021, causally related to the accepted June 9, 2020 employment injury.

### **FACTUAL HISTORY**

On June 11, 2020 appellant, then 50-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on June 9, 2020 she sustained neck, right arm, and right knee strains when her vehicle was rear-ended while in the performance of duty. OWCP accepted the claim for sprain of the ligaments of the cervical spine and sprain of the joints and ligaments of other parts of the neck and assigned OWCP File No. xxxxxx846.<sup>3</sup> Appellant stopped work on June 9, 2020. OWCP paid appellant wage-loss compensation on the supplemental rolls, effective July 25, 2020, and on the periodic rolls, effective January 3, 2021.

A magnetic resonance imaging (MRI) scan of the cervical spine dated June 9, 2020 revealed no fracture or malalignment, the central canal appeared congenitally narrow, cervical spondylosis to include left paracentral disc herniation at C3-C4 causing mild flattening of the ventral cord, and mild-to-moderate central stenosis.

On November 19, 2020 Dr. Yan Gu, a Board-certified physiatrist, treated appellant and administered an intra-articular injection. He diagnosed cervical spondylosis without myelopathy or radiculopathy and cervical spondylosis without myelopathy. In a December 4, 2020 report, Dr. Gu related that on June 9, 2020 appellant was rear-ended in her vehicle while at work. Appellant reported that her head and neck were thrown backward and forward during the impact but she did not lose consciousness. She noted her current symptoms included radicular pain up the back of the head and jaw and down the right shoulder and shoulder blade with occasional numbness and tingling in her hand. Dr. Gu noted findings on physical examination of cervical rigidity, local tenderness to facet joint line with positive loading test, limited range of motion of the neck, and positive Spurling's test. He diagnosed whiplash injury to the neck, sprain of the joints and ligaments of other parts of the neck, and cervical spondylosis without myelopathy. Dr. Gu recommended a series of intra-articular injections and returned appellant to modified-duty work. In a note of even date, he diagnosed cervical whiplash syndrome that began after a work injury on June 9, 2020. Dr. Gu recommended right C3 and C4 medial branch blocks and returned appellant to modified-duty work with no repetitive activity, no bending, stooping, kneeling or squatting, and a lifting restriction of 10 pounds. In a disability claim form of even date, he

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<sup>3</sup> Appellant had previously filed an occupational disease claim (Form CA-2) alleging that she developed a right shoulder condition due to factors of her federal employment, including performing repetitive duties. She noted that she first became aware of her conditions on January 26, 2005 and first realized its relation to her federal employment on February 18, 2005. OWCP assigned that claim OWCP File No. xxxxxx623, and accepted it for tendinitis of the right shoulder and right shoulder impingement. In a separate claim, appellant filed a traumatic injury claim (Form CA-1) alleging that on January 23, 2018 she injured her right shoulder when lifting tubs of mail and casing mail while in the performance of duty. OWCP assigned that claim OWCP File No. xxxxxx944, and accepted it for bicipital tendinitis of the right shoulder, unspecified sprain of right shoulder joint, and sprain of ligaments of the cervical spine. It administratively combined OWCP File Nos. xxxxxx846, xxxxxx623, and xxxxxx944, with the latter designated as the master file.

diagnosed whiplash injury to the neck, sprain of the ligaments and joints, and cervical spondylosis due to an accident that occurred on June 9, 2020. He noted that appellant was totally disabled. In a duty status report (Form CA-17) of even date, Dr. Gu related that on June 9, 2020 appellant sustained whiplash injury to the neck while at work. He noted clinical findings of moderate left paracentral disc herniation at C3-C4 and diagnosed sprain of the joints and ligaments of other parts of the neck. Dr. Gu returned appellant to full-time modified-duty work on December 5, 2020, sitting eight hours a day and lifting limited to 10 pounds.

On January 7, 2021 OWCP referred appellant, the case file, a statement of accepted facts (SOAF), and a series of questions to Dr. Noubar A. Didizian, a Board-certified orthopedist, for a second opinion examination. It requested his opinion on appellant's employment-related conditions, disability and whether she continued to suffer from residuals of her work-related injury and whether she was capable of returning to gainful employment.

In a January 26, 2021 report, Dr. Didizian related appellant's complaints of right trapezius pain, neck stiffness, and occasional headaches. Findings on physical examination revealed normal gait pattern, no winging of the scapula, no paraspinal spasm, intact scapulothoracic articulation with no crepitation or dyskinesia, soreness over the right trapezius, negative Spurling test, no trigger points, negative superior labral tear from anterior to posterior (SLAP) test, and excellent mobility with no crepitation in the right shoulder or neck. Dr. Didizian indicated that upper extremity motor, sensory, and reflexes were intact, and negative Tinel's, Phalen's, and Adson's compression tests. He noted with regard to OWCP File No. xxxxxx846, the accepted sprain of the ligaments of the cervical spine was resolved with no objective residuals present. Dr. Didizian noted that there was no evidence of limitation of range of motion, crepitation, or cervical root irritation. He indicated that appellant responded well to the medial branch blocks and did not have any radicular pain. With regard to OWCP File No. xxxxxx944, the accepted bicipital tendinitis, right shoulder, sprain of the right shoulder, sprain of the ligaments of the cervical spine, were resolved. Dr. Didizian noted that there were no objective findings on examination. With regard to OWCP File No. xxxxxx623, he reported that the accepted right shoulder disorder of the bursa and tendon were resolved. Dr. Didizian noted that examination revealed no evidence of ongoing pathology or residuals. He noted that the diagnosed whiplash injury to the neck, radiculopathy, and cervical spondylosis responded well to the intra-articular injections and at the time of his examination were resolved. Dr. Didizian did not find evidence of radiculopathy and noted that cervical spondylosis was a radiologic diagnosis indicating arthritis in the neck that was attributed to age-related changes. He opined that based on the clinical examination the whiplash injury was resolved, there was no evidence of bicipital tendinitis, bursitis, impingement, or ligamentous injury of the neck and shoulder. Dr. Didizian returned appellant to her prior employment without restriction. In an accompanying work capacity evaluation (Form OWCP-5c), he indicated that appellant was capable of returning to her usual job without restriction.

OWCP continued to receive evidence. In Forms CA-17 dated February 4 and 26, 2021, Dr. Gu noted that appellant sustained a whiplash injury to the neck on June 9, 2020. He noted clinical findings of moderate left paracentral disc herniation at C3-C4 and diagnosed sprain of the joints and ligaments of other parts of the neck. Dr. Gu returned appellant to work on February 5, 2021, with restrictions of sitting eight hours a day and lifting limited to 10 pounds. In a note dated February 26, 2021, he diagnosed cervical whiplash syndrome and recommended radiofrequency

ablation at C3 and C4. Dr. Gu returned appellant to modified-duty work with no repetitive activity, bending, stooping, kneeling or squatting, and a lifting restriction of 10 pounds.

By notice dated March 12, 2021, OWCP advised appellant that it proposed to terminate appellant's wage-loss compensation and medical benefits as she no longer had disability or residuals causally related to her accepted employment injuries. It found, based on Dr. Didizian's report, that she had no current disability and no medical residuals requiring further treatment. OWCP afforded her 30 days to submit additional evidence or argument challenging the proposed termination.

OWCP subsequently received additional evidence. In reports dated February 26 and March 26, 2021, Dr. Gu treated appellant in follow up after a series of intra-articular injections performed on November 19, 2020 and February 4, 2021. Appellant reported only temporary relief in symptoms and indicated that the pain returned. She continued to complain of radicular pain in the back of the head and jaw and down the right shoulder and shoulder blade with numbness and tingling in the hand. Dr. Gu diagnosed whiplash injury to the neck, sprain of joints and ligaments of other parts of neck, cervical spondylosis without myelopathy and recommended radiofrequency ablation. In a note dated March 26, 2021, he diagnosed cervical whiplash syndrome and recommended radiofrequency ablation at C3 and C4. Dr. Gu returned appellant to modified-duty work with no repetitive activity, bending, stooping, kneeling or squatting, and a lifting restriction of 10 pounds.

In a report dated March 29, 2021, Dr. Gu noted reviewing Dr. Didizian's January 26, 2021 report and disagreed with his findings. He indicated that appellant sustained a whiplash injury from a work-related motor vehicle accident that occurred on June 9, 2020 and continued to have residuals from this injury. Dr. Gu advised that whiplash syndrome was a chronic condition. He reported performing two intra-articular injections on November 19, 2020 and February 4, 2021, which provided temporary relief and advised that appellant was scheduled to have a medial branch radiofrequency ablation procedure on April 12, 2021. Dr. Gu indicated that appellant required work restrictions of lifting limited to 10 pounds, additional physical therapy, and modified duty as a result of her work-related injuries.

By decision dated April 20, 2021, OWCP finalized the proposed notice of termination of appellant's wage-loss compensation and medical benefits, effective the same day, finding that Dr. Didizian's second opinion represented the weight of the evidence.

On May 3, 2021 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. The hearing was held on August 12, 2021.

OWCP received additional evidence, including a report documenting that on February 4, 2021 Dr. Gu performed right C3 and C4 medial branch block and diagnosed cervical facet arthropathy. Similarly, on May 10, 2021, he performed radiofrequency ablation of the right C3 and C4 medial branch and diagnosed cervical spondylosis and cervical sprain. Dr. Gu treated appellant on June 18, 2021, who related that her neck pain was almost gone. He noted diagnoses and indicated that appellant reached maximum medical improvement (MMI). On August 13, 2021 appellant reported returning to work in July 2021 and her neck pain returned. Dr. Gu diagnosed

whiplash injury to the neck, sprain of joints and ligaments of other parts of neck, cervical spondylosis without myelopathy and opined that appellant could not tolerate her job. He recommended a functional capacity evaluation (FCE).

By decision dated October 25, 2021, OWCP's hearing representative affirmed the April 20, 2021 decision.

OWCP received additional evidence. On June 4, 2021 Dr. Gu diagnosed whiplash injury to the neck, sprain of joints and ligaments of other parts of neck, and cervical spondylosis without myelopathy. He noted that appellant underwent C3-C4 cervical medial branch radiofrequency ablation on May 10, 2021, which provided excellent neck pain relief. Dr. Gu returned appellant to modified-duty work. In a note dated June 4, 2021, he returned appellant to modified-duty work with lifting limited to 25 pounds. Similarly, in a note dated June 18, 2021, Dr. Gu diagnosed whiplash injury and advised that appellant reached MMI and would be referred for an FCE.

Dr. Nirav Shah, a Board-certified neurosurgeon, evaluated appellant on June 10, 2022 for headaches, pain in the neck and lower back, and radiation to all extremities. He provided a history of injury on June 9, 2020 and diagnosed cervical disc disorder with myelopathy, concussion without loss of consciousness, postconcussion syndrome, cervicgia, radiculopathy of the cervical region, and injury to lumbar spinal cord. Dr. Shah recommended additional diagnostic studies and a back brace.

On June 27, 2022 appellant, through counsel, requested reconsideration. In a separate letter of even date, counsel requested that appellant's claim be expanded to include C3-C4 disc herniation.

By decision dated July 1, 2022, OWCP denied modification of the October 25, 2021 decision. It further denied expansion of the acceptance of appellant's claim, finding that the medical evidence of record was insufficient to establish that a C3-C4 disc herniation condition was causally related to the accepted June 9, 2020 employment injury.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under FECA<sup>4</sup> has the burden of proof to establish the essential elements of his or her claim, including the fact that he or she is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>5</sup>

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<sup>4</sup> *Supra* note 2.

<sup>5</sup> *See C.W.*, Docket No. 17-1636 (issued April 25, 2018).

Where 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.<sup>6</sup>

Causal relationship is a medical question that requires medical opinion evidence to resolve the issue.<sup>7</sup> The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the accepted employment injury.<sup>8</sup>

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.”<sup>9</sup> 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.<sup>10</sup>

### ANALYSIS -- ISSUE 1

The Board finds that the case is not in posture for decision with regard to expansion of the acceptance of the claim.

The evidence of record establishes that a conflict in medical opinion evidence exists between Dr. Didizian, the second opinion physician, and Dr. Gu, appellant’s treating physician, as to whether her claim should be expanded to include additional conditions as causally related to the accepted employment injury. In his January 26, 2021 report, Dr. Didizian found, based on his clinical examination, that there were no objective findings to support ongoing residuals or pathology from appellant’s accepted sprain of the ligaments of the cervical spine, sprain of the joints and ligaments of other parts of the neck, cervical whiplash, bicipital tendinitis, bursitis, impingement, or ligamentous injury of the neck and shoulder. He asserted that all work-related conditions were resolved, and any ongoing symptomology was secondary to arthritis in the neck that was attributed to age-related changes. Dr. Didizian determined that appellant could return to full-duty work, eight hours a day without restrictions.

Appellant’s treating physician, Dr. Gu, however, submitted reports through August 13, 2021, wherein he noted that he continued to treat appellant for worsening symptoms related to a whiplash injury to the neck, sprain of joints and ligaments of other parts of neck, cervical spondylosis without myelopathy, and left paracentral disc herniation at C3-C4. He opined that these conditions were sequelae of the accepted June 9, 2020 employment injury. Appellant

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<sup>6</sup> *K.T.*, Docket No. 19-1718 (issued April 7, 2020); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

<sup>7</sup> *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>8</sup> *Id.*

<sup>9</sup> 5 U.S.C. § 8123(a).

<sup>10</sup> *C.W.*, Docket No. 18-1536 (issued June 24, 2019).

reported continued radicular pain in the back of the head and jaw and down the right shoulder and shoulder blade with numbness and tingling in the hand, and noted marked worsening of her condition. He indicated that appellant continued to have residuals from the work-related motor vehicle accident that occurred on June 9, 2020, and continued to undergo nerve block procedures and a medial branch radiofrequency ablation procedure on April 12, 2021. Dr. Gu indicated that appellant required work restrictions of lifting limited to 10 pounds, additional physical therapy, and modified-duty work as a result of her work-related injuries.

An unresolved conflict in medical opinion exists between the opinions of Dr. Didizian, OWCP's referral physician, and Dr. Gu, appellant's treating physician, as to whether appellant established expansion of the acceptance of the claim.<sup>11</sup> As a conflict remains in the medical evidence with regard to expansion of the acceptance of the claim, the Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits.

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

Once OWCP has accepted a claim it has the burden of justifying termination or modification of compensation benefits.<sup>12</sup> It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.<sup>13</sup> OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>14</sup>

### **ANALYSIS -- ISSUE 2**

As explained above, OWCP undertook development of the medical record to determine whether the acceptance of appellant's claim should be expanded to include additional conditions, but it did not complete that development. As the issue of expansion was not in posture for decision, the Board finds that OWCP failed to establish that appellant no longer had residuals or disability due to the accepted employment injury. Consequently, OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective April 20, 2021.<sup>15</sup>

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<sup>11</sup> *G.F., id.*; *S.S.*, Docket No. 19-1658 (issued November 12, 2020); *C.W.*, Docket No. 18-1536 (issued June 24, 2019).

<sup>12</sup> *L.L.*, Docket No. 18-1426 (issued April 5, 2019); *C.C.*, Docket No. 17-1158 (issued November 20, 2018); *I.J.*, 59 ECAB 408 (2008); *Vivien L. Minor*, 37 ECAB 541 (1986).

<sup>13</sup> *A.D.*, Docket No. 18-0497 (issued July 25, 2018). In general, the term disability under FECA means incapacity because of injury in employment to earn the wages which the employee was receiving at the time of such injury. *See* 20 C.F.R. § 10.5(f).

<sup>14</sup> *See R.P.*, Docket No. 17-1133 (issued January 18, 2018).

<sup>15</sup> In light of the Board's disposition of Issue 2, Issue 3 is rendered moot.

**CONCLUSION**

The Board finds that the case is not in posture for decision with regard to expansion of the acceptance of the claim. The Board further finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective April 20, 2021.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 1, 2022 decision of the Office of Workers' Compensation Programs is set aside in part and reversed in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: August 4, 2023  
Washington, DC

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

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

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