

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

_____)
A.A., Appellant)

and)

U.S. POSTAL SERVICE, WEST NEW YORK)
POST OFFICE, West New York, NJ, Employer)
_____)

**Docket No. 23-0547
Issued: April 19, 2024**

Appearances:

James D. Muirhead, Esq., for the appellant¹
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 8, 2023 appellant, through counsel, filed a timely appeal from a December 8, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective January 26, 2022, as she no longer had

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

disability or residuals causally related to her accepted July 26, 2018 employment injury; and (2) whether appellant has met her burden of proof to establish continuing employment-related disability or residuals on or after January 26, 2022, causally related to her accepted July 26, 2018 employment injury.

FACTUAL HISTORY

On July 26, 2018 appellant, then a 40-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date she sustained a left ankle and right knee injury when she stepped onto the street and fell while in the performance of duty. She stopped work on July 26, 2018. On August 18, 2018 OWCP accepted the claim for left ankle sprain. Appellant returned to limited-duty work on October 2, 2018, and full-duty work on December 26, 2018.³ OWCP paid her wage-loss compensation on the supplemental rolls, from September 10 through October 5, 2018.

A July 26, 2018 x-ray of her left ankle revealed no fracture, osteonecrosis, or dislocation, and soft tissue swelling at the level of the lateral malleolus. An August 1, 2018 left ankle x-ray revealed lateral ankle soft tissue swelling and suspicion of a small fracture of the lateral malleolus.

A May 10, 2021 left ankle magnetic resonance imaging (MRI) scan demonstrated an impression of mild-to-moderate chronic appearing low ankle sprain, including grade 2 sprains of the anterior and posterior talofibular ligaments and grade 1 sprain of deltoid ligament with localized synovitis; mild-to-moderate changes of the peroneal tenosynovitis without tear; no evidence of fracture or malalignment at the mortise; soft tissue swelling and edema; a small joint effusion; no focal soft tissue mass or collection; and mild osteoarthritis.

On July 30, 2021 OWCP referred appellant, along with the medical record, a statement of accepted facts (SOAF), and a series of questions, to Dr. Frank Corrigan, a Board-certified orthopedic surgeon, for a second opinion evaluation and determination regarding whether she had any disability or residuals causally related to the July 26, 2018 employment injury.

On August 12, 2021 Dr. Corrigan documented her physical examination findings and discussed her history of injury. Dr. Corrigan noted that examination of the left ankle revealed medial and lateral tenderness while examination of the right ankle revealed no scars, swelling, or tenderness. He opined that appellant's work-related left ankle sprain had resolved as she had reached maximum medical improvement (MMI), noting that his clinical examination revealed no objective findings that would support her continued subjective complaints. Dr. Corrigan further opined that she remained disabled as a result of the lumbar spine injury under a different OWCP claim. He determined that based on the examination of appellant's left ankle injury, no further treatment was medically warranted, and she no longer suffered from disability or residuals of her July 26, 2018 employment injury.

³ The record reflects that appellant was disabled from work due to back conditions from a work-related injury in OWCP File No. xxxxxx255, which OWCP accepted for neck sprain, lumbar sprain, thoracic sprain, lumbar disc herniation, annular tear of lumbar disc, lumbar radiculopathy, and intervertebral disc displacement and degeneration.

On August 26, 2021 OWCP notified appellant that it proposed to terminate her wage-loss compensation and medical benefits. It found that Dr. Corrigan's opinion represented the weight of the evidence and established that she no longer had disability or residuals due to her accepted July 26, 2018 employment injury. OWCP afforded appellant 30 days to submit additional evidence or argument if she disagreed with the proposed termination.

On September 7, 2021 counsel for appellant objected to OWCP's notice of proposed termination as he was not notified of the appointment with Dr. Corrigan and not copied on the August 26, 2021 notice of proposed termination.

On October 6, 2021 OWCP referred appellant, the medical record, the SOAF, and a series of questions to Dr. Leon Sultan, a Board-certified orthopedic surgeon, for a new second opinion evaluation and determination regarding whether she had any disability or residuals causally related to the accepted July 26, 2018 employment injury.

On November 10, 2021 Dr. Sultan evaluated appellant for the purpose of the second opinion evaluation. In his report, he documented appellant's physical examination findings, discussed her history of injury, and summarized her various diagnostic studies. Dr. Sultan noted review of imaging films from a May 10, 2021 left ankle MRI scan, finding mild hypertrophic changes involving the talonavicular joint, a well-preserved ankle joint, and unremarkable soft tissues of the left ankle. He opined that appellant's left knee and right ankle injuries had resolved, noting that his clinical examination revealed no objective findings to confirm any residual permanency of the July 26, 2018 employment injury. Dr. Sultan reported that she did not have disability or residuals causally related to the July 26, 2018 employment injury and she had reached MMI. He further noted that appellant's ongoing partial disability was a result of a January 27, 2014 employment injury and two subsequent surgical interventions.

On December 22, 2021 OWCP notified appellant that it proposed to terminate her wage-loss compensation and medical benefits. It found that Dr. Sultan's opinion represented the weight of the evidence and established that she no longer had disability or residuals causally related to her accepted July 26, 2018 employment injury. OWCP afforded her 30 days to submit additional evidence or argument if she disagreed with the proposed termination.

By decision dated January 26, 2022, OWCP finalized the termination of appellant's wage-loss compensation and medical benefits, effective that same date. It found that the weight of the medical evidence rested with Dr. Sultan, serving as the second opinion physician, who opined in his November 10, 2021 report that her accepted work-related medical condition of left ankle sprain had ceased and she no longer had any disability or residuals as a result of the July 26, 2018 employment injury.

On February 5, 2022 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In support of her claim, appellant submitted medical reports dated April 20, 2021 through January 25, 2022 from Dr. Ayan Goswami, a Board-certified podiatrist. Dr. Goswami discussed her July 26, 2018 employment injury resulting in a severe left ankle sprain, which became chronic with severe instability as evidenced in the May 10, 2021 left ankle MRI scan. He explained that

the MRI scan demonstrated severe damage involving the anterior talofibular ligament, the posterior talofibular ligament, and the deltoid ligament resulting in an unstable ankle joint. Dr. Goswami further reported that appellant's back injury, which was repaired surgically, would have repetitive injury if the left ankle continued to remain unstable. He opined that her left ankle injury was a result of the July 26, 2018 employment injury and discussed the need for physical therapy and possible surgical intervention. In the January 25, 2022 report, Dr. Goswami explained that the chronic nature of the injury, which was identified on the most recent MRI scan report provided further evidence of the structural damage to the left ankle joint that could be clinically correlated to the physical and biomechanical examination as well as appellant's overall symptoms.

By decision dated August 2, 2022, OWCP's hearing representative affirmed the January 26, 2022 termination decision.

On October 27, 2022 appellant, through counsel, requested reconsideration of the August 2, 2022 decision. Counsel noted submission of a September 7, 2022 left ankle MRI scan study from Dr. Michael V. Dutka, a Board-certified radiologist, which demonstrated objective findings of chronic grade 2 sprains of the anterior and posterior talofibular ligaments, grade 1 sprain of the deltoid ligament, and peroneal tenosynovitis.

By decision dated October 28, 2022, OWCP denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

On November 23, 2022 appellant, through counsel, requested reconsideration of the August 2 and October 28, 2022 decisions. She submitted a November 4, 2022 medical report from Dr. Scott Hanauer, a podiatrist, as well as a previously-submitted September 7, 2022 left ankle MRI scan.

In a November 4, 2022 medical report, Dr. Hanauer, discussed the findings of appellant's September 7, 2022 left ankle MRI scan and diagnosed chronic left ankle sprain and instability, grade 2 anterior talofibular ligament injury, and ankle synovitis with peroneal tenosynovitis. He opined that she had signs and symptoms consistent with chronic lateral ankle sprain and instability.

By decision dated December 8, 2022, OWCP denied modification of the August 2, 2022 decision.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of an employee's benefits.⁴ After it has been determined that, an employee has a disability causally related to his or her employment, it may not terminate compensation without establishing that the disability has ceased or that it is no longer related to

⁴ *Z.D.*, Docket No. 19-0662 (issued December 5, 2019); *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

the employment.⁵ OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁷ To terminate authorization for medical treatment, OWCP must establish that he or she no longer has residuals of an employment-related condition, which require further medical treatment.⁸

ANALYSIS -- ISSUE 1

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective January 26, 2022.

In his November 10, 2021 report, Dr. Sultan answered questions posed by OWCP and opined that appellant's left ankle sprain had resolved based on his clinical examination, which revealed no objective findings to confirm residuals of the July 26, 2018 employment injury. However, in his November 10, 2021 report, Dr. Sultan referenced MRI scans of May 10, 2023, performed four months prior to his examination. He noted the MRI scans demonstrated a mild-to-moderate chronic appearing low grade ankle sprain including two sprains of the anterior and posterior talofibular ligaments and a grade 1 sprain of the deltoid ligament with localized synovitis. He further noted mild-to-moderate changes of the peroneal tenosynovitis without any tear with soft tissue swelling and edema with small joint effusion. Dr. Sultan did not reference any clinical explanation with regard to these radiographic studies nor supplied an opinion as to whether they were clinically significant regarding appellant's ability to work. The Board finds that Dr. Sultan's opinion is contradictory in nature and does not contain sufficient medical reasoning to establish that appellant no longer had disability or residuals due to her accepted July 26, 2018 employment injury.⁹ Therefore, his opinion is of diminished probative value.¹⁰ The Board thus finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits..¹¹

⁵ See *R.P., id.*; *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

⁶ See *P.T.*, Docket No. 21-0328 (issued May 2, 2022); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁷ *Z.D.*, *supra* note 4; *T.P.*, 58 ECAB 524 (2007); *A.P.*, Docket No. 08-1822 (issued August 5, 2009); *Kathryn E. Demarsh*, 56 ECAB 677 (2005); *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁸ *T.C.*, Docket No. 20-1163 (issued July 13, 2021); *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002); *Furman G. Peake, id.*

⁹ *J.C.*, Docket No. 22-0731 (issued November 29, 2022).

¹⁰ *P.E.*, Docket No. 19-0837 (issued October 20, 2020).

¹¹ *S.J.*, Docket No. 22-0936 (issued April 27, 2023); *L.B.*, Docket No. 20-0692 (issued November 20, 2020).

CONCLUSION

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective January 26, 2022.¹²

ORDER

IT IS HEREBY ORDERED THAT the December 8, 2022 decision of the Office of Workers' Compensation Programs is reversed.

Issued: April 19, 2024
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

¹² In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.