

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

R.V., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
EAST ORANGE VA MEDICAL CENTER,
East Orange, NJ, Employer**

**Docket No. 23-1151
Issued: April 9, 2024**

Appearances:

Russell T. Uliase, Esq., for the appellant¹

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 8, 2023 appellant, through counsel, filed a timely appeal from an April 10, 2023 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.³

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.*

³ The Board notes that, following the April 10, 2023 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 has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective October 11, 2022, as she no longer had disability or residuals causally related to her accepted employment injury; and (2) whether appellant has met her burden of proof to establish continuing disability on or after August 30, 2018 due to the accepted employment injury.

FACTUAL HISTORY

This case has previously been before the Board on a different issue.⁴ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On March 2, 2004 appellant, then a 62-year-old office assistant, filed an occupational disease claim (Form CA-2) alleging that she had sustained bilateral carpal tunnel syndrome and left de Quervain's tenosynovitis due to factors of her federal employment including repetitive typing and filing.⁵ OWCP accepted the claim for bilateral carpal tunnel syndrome. Appellant stopped work on June 15, 2004 and did not return. OWCP paid her wage-loss compensation on the periodic rolls, effective February 20, 2005.

On June 15, 2004 appellant underwent OWCP-authorized carpal tunnel release and flexor tenosynovectomy on the right hand, and on the left hand on October 12, 2004. OWCP paid her wage-loss compensation on the periodic rolls commencing October 31, 2004.

OWCP later expanded its acceptance of appellant's claim to include bilateral de Quervain's tenosynovitis.

On July 28, 2011 appellant underwent OWCP-authorized A1 pulley release of the right index and middle fingers to address stenosing tenosynovitis. On January 21, 2015 she underwent OWCP-authorized A1 pulley release of the right ring finger.

In reports dated August 6, 2019, Dr. Brian Katt, a Board-certified orthopedic surgeon, recounted a history of injury and treatment. On examination, he observed discomfort over the right radial styloid and slight swelling and tenderness of the first dorsal extensor compartment. Dr. Katt diagnosed right radial styloid (de Quervain's) tenosynovitis and right wrist pain. He opined that appellant was totally disabled from work and recommended surgery to address right radial styloid tenosynovitis.

On June 15, 2020 OWCP prepared a statement of accepted facts (SOAF), which provided an account of occupational and nonoccupational conditions. It listed the June 15, 2004 right wrist flexor tenosynovectomy and right carpal tunnel release, October 12, 2004 left carpal tunnel release, July 28, 2011 A1 pulley release of the right index and middle fingers, and January 21,

⁴ Docket No. 20-1331 (issued March 24, 2021).

⁵ On February 15, 2002 appellant underwent left de Quervain's release.

2015 A1 pulley release of the right ring finger. OWCP did not indicate that it authorized these procedures.

On July 14, 2020 OWCP referred appellant, the medical record, the June 15, 2020 SOAF, and a series of questions to Dr. Erin Elmore, a Board-certified psychiatrist and neurologist, for a second opinion examination regarding the nature and extent of her accepted conditions.

On August 13, 2020 OWCP referred appellant, the medical record, the June 15, 2020 SOAF, and a series of questions to Dr. Frank J. Corrigan, a Board-certified orthopedic surgeon, for a second opinion examination regarding the nature and extent of her accepted conditions.

In a September 17, 2020 report, Dr. Corrigan reviewed the medical record and the SOAF. On examination, he observed restricted ranges of motion in the bilateral wrists, fingers, and thumbs, and surgical scars conforming to appellant's medical history. Dr. Corrigan diagnosed bilateral carpal tunnel syndrome, and bilateral wrist and hand tenosynovitis. He opined that appellant had attained maximum medical improvement (MMI) and was able to perform her date-of-injury job with no restrictions. Dr. Corrigan indicated that appellant required no further medical treatment related to the accepted conditions.

In an October 6, 2020 report of a July 30, 2020 examination, Dr. Elmore reviewed the medical record and the SOAF. She noted findings on examination indicative of residual carpal tunnel syndrome with motor and atrophic findings. Dr. Elmore found that from a neurologic standpoint, appellant could resume her date-of-injury position.

By notice dated October 28, 2020, OWCP advised appellant that it proposed to terminate her wage-loss compensation and medical benefits based on Dr. Corrigan's opinion that the January 21, 2004 accepted employment conditions had ceased without residuals. It afforded her 30 days to submit additional evidence or argument challenging the proposed termination.

In response, appellant submitted a November 17, 2020 statement contesting the accuracy of Dr. Corrigan's factual history.

In a November 25, 2020 report, Dr. Katt recounted a history of injury and noted examination findings of a positive Finkelstein's test on the right, pain over the first dorsal extensor compartment, and pain and restricted motion of the right little digit. He diagnosed radial styloid (de Quervain's) tenosynovitis and right little trigger finger. Dr. Katt noted that appellant wished to proceed with a de Quervain's release and right little trigger finger release.

By decision dated December 3, 2020, OWCP terminated appellant's wage-loss compensation and medical benefits, effective December 6, 2020, finding that the weight of the medical evidence rested with the September 17, 2020 report of Dr. Corrigan.

On December 9, 2020 appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review.

On December 15, 2020 appellant underwent release of the right first dorsal extensor compartment and right little trigger finger, performed by Dr. Katt.

By decision dated February 5, 2021, an OWCP hearing representative reversed OWCP's December 3, 2020 decision as OWCP had relied only on the report of Dr. Corrigan, without

consideration of Dr. Elmore's report. The hearing representative further found that the reports of Dr. Corrigan and Dr. Elmore did not establish that the accepted conditions had ceased.

In an April 19, 2021 development letter, OWCP requested a supplemental report from Dr. Corrigan to determine the status of appellant's accepted conditions and her work capacity. In a second development letter of even date, it requested the same type of supplemental report from Dr. Elmore.

In a June 7, 2021 supplemental report, Dr. Corrigan opined that appellant did have bilateral hand pain. However, these symptoms were "not causally related to the work incident." He explained that it was illogical to think that appellant had developed de Quervain's tenosynovitis or a right small trigger finger causally related to work factors as she had stopped work on January 21, 2004 and not performed any work-related activities in 17 years. Dr. Corrigan noted that the accepted conditions did not preclude appellant from performing her date-of-injury position.

In a March 8, 2022 supplemental report, Dr. Elmore opined that appellant had residual findings of carpal tunnel syndrome in both hands, which would not preclude her from performing her date-of-injury position, but that she had a "number of orthopedic issues" that affected her hands.

On June 29, 2022 OWCP prepared an updated SOAF, indicating that on June 15, 2004, appellant "underwent surgery of the right wrist flexor tenosynovectomy and right carpal tunnel release." It further noted that on December 15, 2020, appellant "underwent surgery of release of first dorsal extensor compartment and release of trigger finger, right little digit. Unrelated to the claim and not approved by this office."

On July 1, 2022 OWCP referred appellant, the medical record, the June 29, 2022 SOAF, and a series of questions to Dr. Corrigan to obtain an updated second opinion regarding the status of her accepted conditions and work capacity. It instructed him to utilize the June 29, 2022 SOAF as the only factual framework for his opinion.

In a July 21, 2022 report, Dr. Corrigan reviewed the medical record and the SOAF, and noted findings on examination, including limited range of motion of the bilateral hands, wrists, and fingers, and negative Tinel's, Phalen's, and Finkelstein's tests bilaterally. He diagnosed bilateral carpal tunnel syndrome and bilateral hand tenosynovitis. Dr. Corrigan noted that the June 15 and October 12, 2004 surgical procedures correlated with appellant's "causally related diagnosis based on the [SOAF]," while the July 28, 2011 and January 21, 2015 procedures did not correlate but were instead for an unrelated condition of trigger digits. He opined that any current bilateral hand and wrist symptoms were not occupationally related as she had not worked at the employing establishment in 18 years. Dr. Corrigan found appellant able to perform her date-of-injury position without restriction.

By notice dated September 6, 2022, OWCP advised appellant that it proposed to terminate her wage-loss compensation and medical benefits based on Dr. Corrigan's July 21, 2022 opinion that the accepted conditions had ceased without residuals. It afforded her 30 days to submit additional evidence or argument challenging the proposed termination.

In response, appellant, through counsel, submitted a September 21, 2022 statement contesting the proposed termination as Dr. Corrigan's opinion was contradictory and insufficiently

rationalized. She submitted a copy of Dr. Katt's November 25, 2020 report, which was already of record.

By decision dated October 11, 2022, OWCP terminated appellant's wage-loss compensation and medical benefits effective that date, based on Dr. Corrigan's opinion as the weight of the medical evidence.

On October 18, 2022 appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review.

OWCP received a December 19, 2022 report by Dr. Katt, noting tremor and weakness in appellant's hands. Dr. Katt diagnosed radial styloid (de Quervain's) tenosynovitis. He opined that appellant had attained MMI and remained disabled from work.

At the hearing, conducted by telephone on March 7, 2023, counsel asserted that appellant remained totally disabled from work, and that Dr. Elmore's opinion was insufficiently rationalized to meet OWCP's burden of proof to terminate appellant's wage-loss compensation and medical benefits. He asserted that OWCP should reverse the termination on that basis. Alternatively, counsel contended that there was a conflict of medical opinion evidence between the attending physician, Dr. Katt, and the government physicians, Drs. Corrigan and Elmore, as to whether the accepted conditions had ceased without residuals.

In a March 10, 2023 addendum to his February 26, 2023 report, Dr. Katt opined that appellant remained disabled from work due to active bilateral carpal tunnel syndrome and bilateral tenosynovitis. He opined that appellant's "longstanding tenosynovitis and carpal tunnel syndrome has led to disuse and therefore she is not able to return to work. This disuse is clearly related to the original" compensation claim.

By decision dated April 10, 2023, OWCP's hearing representative affirmed the October 11, 2022 decision, in part, regarding the termination of disability compensation, and vacated the October 11, 2022 decision with regard to appellant's entitlement to additional medical treatment. The hearing representative found that Dr. Corrigan was equivocal with regard to whether appellant continued to have "one or both of the accepted medical conditions, clearly indicating at times such to not exist and at other times listing them as present." The hearing representative noted that Dr. Elmore, in her March 8, 2022 report, indicated that appellant "still possessed residuals of carpal tunnel syndrome." The hearing representative remanded the case to obtain a supplemental opinion from Dr. Corrigan addressing whether the accepted conditions remained active and related to her federal employment.

LEGAL PRECEDENT -- ISSUE 1

According to FECA,⁶ once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of an employee's benefits.⁷ OWCP may not terminate compensation without establishing that the disability had ceased or that it was no longer

⁶ *Supra* note 2.

⁷ *S.H.*, Docket No. 19-1855 (issued March 10, 2021); *S.F.*, 59 ECAB 642 (2008).

related to the employment.⁸ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁹ The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.¹⁰ 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.¹¹

ANALYSIS -- ISSUE 1

The Board finds that OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation, effective October 11, 2022.

OWCP referred appellant to Dr. Corrigan for a second opinion evaluation to determine the status of her accepted conditions and work capacity. It prepared an updated SOAF on June 29, 2022, listing the June 15, 2004 right carpal tunnel release and flexor tenosynovectomy, and December 15, 2020 right little trigger finger release and release of first dorsal extensor compartment "[u]nrelated to the claim and not approved" by OWCP. Dr. Corrigan provided a July 21, 2022 report opining that the June 15 and October 12, 2004 surgical procedures were correlated with appellant's "causally related diagnosis based on the [SOAF]," while the July 28, 2011 and January 21, 2015 procedures did not correlate, but were instead for an unrelated condition of trigger digits.

It is OWCP's responsibility to provide a complete and proper frame of reference for a physician by preparing a SOAF.¹² OWCP's procedures dictate that, when a district medical adviser, second opinion specialist, or referee physician renders a medical opinion based on a SOAF, which is incomplete or inaccurate, or does not use the SOAF as the framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether.¹³

OWCP did not provide Dr. Corrigan with a complete, accurate SOAF. The June 29, 2022 SOAF omitted the OWCP-authorized October 12, 2004 left carpal tunnel release and July 28, 2011 A1 pulley release of the right ring finger. As Dr. Corrigan's opinion was not based on a proper

⁸ *A.G.*, Docket No. 18-0749 (issued November 7, 2018); *I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

⁹ *R.R.*, Docket No. 19-0173 (issued May 2, 2019); *Del K. Rykert*, 40 ECAB 284 (1988).

¹⁰ *L.W.*, Docket No. 18-1372 (issued February 27, 2019); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

¹¹ *K.J.*, Docket No. 20-0572 (issued July 12, 2023); *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *A.P.*, Docket No. 08-1822 (issued August 5, 2009).

¹² *M.B.*, Docket No. 21-0060 (issued March 17, 2022); *J.N.*, Docket No. 19-0215 (issued July 15, 2019); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

¹³ *R.W.*, Docket No. 19-1109 (issued January 2, 2020); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3 (October 1990).

SOAF, it is of diminished probative value.¹⁴ The Board thus finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation effective October 11, 2022.¹⁵

CONCLUSION

The Board finds that OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation, effective October 11, 2022.

ORDER

IT IS HEREBY ORDERED THAT the April 10, 2023 decision of the Office of Workers' Compensation Programs is reversed.

Issued: April 9, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

¹⁴ *Id.* See also *B.C.*, Docket No. 20-1672 (issued February 8, 2023); *C.S.*, Docket No. 20-1475 (issued October 4, 2021).

¹⁵ In light of the Board's disposition in Issue 1, Issue 2 is rendered moot.