

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

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A.T., Appellant )

and )

U.S. POSTAL SERVICE, QUEENS VEHICLE )  
PLANT FACILITY, Jamaica, NY, Employer )  
\_\_\_\_\_ )

**Docket No. 24-0797**  
**Issued: August 29, 2024**

*Appearances:*

Thomas S. Harkins, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On July 30, 2024 appellant, through counsel, filed a timely appeal from a February 22, 2024 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.

**ISSUE**

The issue is whether appellant has met his burden of proof to establish continuing disability or residuals on or after December 7, 2018, causally related to the accepted March 24, 2017 employment injury.

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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.*

## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>3</sup> 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 29, 2017 appellant, then a 50-year-old auto technician mechanic, filed a traumatic injury claim (Form CA-1) alleging that on that day he sustained injuries to his knees, shin, and chest when he slipped and struck a bumper while loading his vehicle while in the performance of duty. He stopped work on March 27, 2017. On July 12, 2017 OWCP accepted appellant's claim for abrasion and contusion of the left knee.<sup>4</sup>

On October 22, 2018 OWCP advised appellant of its proposed termination of wage-loss compensation and medical benefits based on the April 30, June 1, and July 26, 2018 medical reports of Dr. Andrew E. Farber, an osteopathic Board-certified orthopedic surgeon serving as a second opinion physician, who opined that the accepted conditions had resolved without residuals or disability. It afforded appellant 30 days to submit additional evidence or argument if he disagreed with the proposed termination of benefits. Appellant submitted additional medical evidence.

By decision dated December 6, 2018, OWCP terminated appellant's wage-loss and medical compensation benefits, effective December 7, 2018. It found that the reports of Dr. Farber were entitled to the weight of the medical evidence and established that he had no continuing residuals or disability from work due to his March 24, 2017 employment injury.

On December 21, 2018 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated July 22, 2019, OWCP's hearing representative affirmed the December 6, 2018 termination decision, finding that the weight of the medical evidence rested with the opinion of Dr. Farber and established that appellant had no continuing employment-related residuals or disability.

On November 29, 2019 appellant, through his then-counsel, appealed to the Board. By decision dated October 8, 2020, the Board affirmed the July 22, 2019 termination decision,<sup>5</sup> finding that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective December 7, 2018. The Board found that Dr. Farber's opinion was entitled to the weight of the medical evidence, because it was based on a proper factual and medical history and physical examination findings and provided medical rationale for his opinion. The Board further found that appellant had not met his burden of proof to establish continuing disability or residuals on or after December 7, 2018.

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<sup>3</sup> Docket No. 20-0334 (issued October 8, 2020); Docket No. 22-0716 (issued February 24, 2023).

<sup>4</sup> By separate decision dated July 13, 2017, OWCP denied expansion of the acceptance of appellant's claim to include bilateral knee osteoarthritis, bilateral knee tear of the meniscus, right knee rupture of anterior cruciate ligament, and anterior cruciate ligament sprain of the bilateral knees.

<sup>5</sup> Docket No. 20-0334 (issued October 8, 2020).

On October 3, 2021 appellant, through current counsel, requested reconsideration before OWCP.

By decision dated December 16, 2021, OWCP denied modification of its termination decision, again finding that Dr. Farber's opinion constituted the weight of the medical evidence.

On March 2, 2022 appellant, through counsel, requested reconsideration. Counsel submitted additional medical evidence.

By decision dated March 23, 2022, OWCP denied modification of its December 16, 2021 decision, finding that a January 4, 2021 report from Dr. Steven Touliopoulos, Board-certified in orthopedic sports medicine, failed to provide a rationalized opinion explaining how appellant's continuing disability from work was causally related to his accepted employment conditions.

On April 12, 2022 appellant, through counsel, appealed to the Board. By decision dated February 24, 2023, the Board affirmed the March 23, 2022 termination decision,<sup>6</sup> finding that Dr. Touliopoulos failed to provide a rationalized medical opinion explaining how appellant's continuing disability and residuals on or after December 7, 2018, were causally related to the accepted March 24, 2017 employment injury.

On February 14, 2024 appellant, through counsel, requested reconsideration before OWCP. In support of the request, counsel submitted an additional report from Dr. Touliopoulos dated February 6, 2024. In his February 6, 2024 report, Dr. Touliopoulos recounted a history of appellant's March 24, 2017 employment injury and his medical treatment. He discussed findings on physical and x-ray examination. Dr. Touliopoulos diagnosed additional conditions of left knee meniscal and chondral injuries; patellofemoral symptomatology and arthrofibrosis; rule out collateral ligament insufficiency; right knee anterior cruciate ligament (ACL) tear with medial meniscal tear; chondral injuries; aggravation and progression of underlying right knee degenerative joint disease; and right leg injury (rule out myofascial defect and post-traumatic fibroma). He opined that these conditions were causally related to appellant's March 24, 2017 employment injury. Dr. Touliopoulos noted his previous recommendation that appellant undergo a right total knee replacement. He also reiterated his prior opinion that appellant remained totally disabled from his previous employment due to his accepted bilateral knee conditions.

By decision dated February 22, 2024, OWCP denied modification of its termination decision.

### **LEGAL PRECEDENT**

When OWCP properly terminates compensation benefits, the burden shifts to appellant to establish continuing disability or residuals after that date, causally related to the accepted employment injury.<sup>7</sup> To establish causal relationship between the condition as well as any

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<sup>6</sup> Docket No. 22-0716 (issued February 24, 2023).

<sup>7</sup> See *M.D.*, Docket No. 21-0080 (issued August 16, 2022); *C.P.*, Docket No. 21-0173 (issued March 23, 2022); *S.M.*, Docket No. 18-0673 (issued January 25, 2019); *C.S.*, Docket No. 18-0952 (issued October 23, 2018); *Manuel Gill*, 52 ECAB 282 (2001).

attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background, supporting such causal relationship.<sup>8</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish continuing disability or residuals on or after December 7, 2018, causally related to the accepted March 24, 2017 employment injury.

Preliminarily, the Board notes that findings made in prior Board decisions are *res judicata*, absent any further review by OWCP under section 8128 of FECA. It is, therefore, unnecessary for the Board to consider the evidence appellant submitted prior to the issuance of OWCP's March 23, 2022 decision as the Board considered that evidence in its February 24, 2023 decision.<sup>9</sup>

Following OWCP's March 23, 2022 decision, appellant submitted a February 6, 2024 report from Dr. Touliopoulos. He opined that appellant sustained left knee meniscal and chondral injuries; patellofemoral symptomatology and arthrofibrosis; rule out collateral ligament insufficiency; right knee ACL tear with medial meniscal tear; chondral injuries; aggravation and progression of underlying right knee degenerative joint disease; and right leg injury (rule out myofascial defect and post-traumatic fibroma) due to the March 24, 2017 employment injury. Dr. Touliopoulos also opined that he had continuing residuals and disability from work causally related to the accepted bilateral knee conditions. However, Dr. Touliopoulos did not explain with sufficient rationale as to how any continuing conditions and disability were causally related to the March 24, 2017 employment injury. The Board has held that a medical report is of limited probative value if it contains a medical opinion which is unsupported by medical rationale.<sup>10</sup> Further, Dr. Touliopoulos did not provide a rationalized medical explanation as to how the accepted employment injury physiologically caused the diagnosed left knee meniscal and chondral injuries; patellofemoral symptomatology and arthrofibrosis; rule out collateral ligament insufficiency; right knee ACL tear with medial meniscal tear; chondral injuries; aggravation and progression of underlying right knee degenerative joint disease; and right leg injury (rule out myofascial defect and post-traumatic fibroma).<sup>11</sup> For these reasons, the Board finds that his opinions are insufficient to meet appellant's burden of proof.

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

<sup>9</sup> *A.T.*, Docket No. 22-0716 (issued February 24, 2023); *G.W.*, Docket No. 22-0301 (issued July 25, 2022); *M.D.*, Docket No. 19-0510 (issued August 6, 2019).

<sup>10</sup> *Id.*; *see also G.N.*, Docket No. 23-0763 (issued February 21, 2024).

<sup>11</sup> *D.F.*, Docket No. 23-1182 (issued March 27, 2024); *D.S.*, Docket No. 23-0218 (issued June 26, 2021); *G.R.*, Docket No. 21-1196 (issued March 16, 2022); *K.J.*, Docket No. 21-0020 (issued October 22, 2021); *L.R.*, Docket No. 16-0736 (issued September 2, 2016); *J.R.*, Docket No. 12-1099 (issued November 7, 2012); *Douglas M. McQuaid*, 52 ECAB 382 (2001).

As the medical evidence of record is insufficient to establish continuing disability or residuals on or after December 7, 2018, causally related to the accepted March 24, 2017 employment injury, the Board finds that appellant 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 appellant has not met his burden of proof to establish continuing disability or residuals on or after December 7, 2018, causally related to the accepted March 24, 2017 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 22, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 29, 2024  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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