

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

|                                   |   |                       |
|-----------------------------------|---|-----------------------|
| S.F., Appellant                   | ) |                       |
|                                   | ) |                       |
| and                               | ) | Docket No. 24-0304    |
|                                   | ) | Issued: July 10, 2024 |
| U.S. POSTAL SERVICE, MID-ISLAND   | ) |                       |
| PROCESSING & DISTRIBUTION CENTER, | ) |                       |
| Melville, NY, Employer            | ) |                       |
|                                   | ) |                       |

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On February 1, 2024 appellant filed a timely appeal from a September 27, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

---

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the September 27, 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.*

## ISSUE

The issue is whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective September 27, 2023, as she no longer had disability or residuals causally related to her accepted September 8, 2022 employment injury.

## FACTUAL HISTORY

OWCP accepted that on September 8, 2022 appellant then a 24-year-old mail handler, sustained sprains of the wrists, left knee, and left ankle when she fell into the opening between a trailer and the loading dock ramp and twisted her knee while in the performance of duty. It paid her wage-loss compensation on the supplemental rolls effective October 24, 2022.

In a March 20, 2023 report, Dr. Michael Horowitz, a Board-certified hand surgeon, noted that appellant presented for an initial evaluation of her hands due to a work-related incident that occurred on September 8, 2022. He reported her physical examination findings which included tenderness over the bilateral thenar muscles and the left radial aspect of the wrist, bilateral positive Phalen's, forearm compression test, and Tinel's sign. Dr. Horowitz diagnosed bilateral carpal tunnel syndrome, unspecified sprain of the bilateral wrists, and bilateral trigger thumb. He also noted that a November 28, 2022 magnetic resonance imaging (MRI) scan provided an impression of right wrist small tear of the left scapholunate ligament, as well as a small tear of the extensor carpi ulnaris in the right wrist. Dr. Horowitz opined that appellant's injuries and symptoms were directly related to the work-related injury, and that she remained 100 percent disabled. He advised her to remain off work.

In a March 28, 2023 report, Dr. Charles DeMarco, a Board-certified orthopedic surgeon and sports medicine specialist, noted the history of appellant's September 8, 2022 work injury and continued to diagnose left ankle sprain and left knee sprain causally related to the September 8, 2022 work injury. He provided appellant's physical examination findings and recommended continued physical therapy and home exercise program. Dr. DeMarco opined that she had an overall marked partial disability of 75 percent.

On April 25, 2023 OWCP referred appellant, a statement of accepted facts (SOAF), the case record, and a series of questions, to Dr. Leon Sultan, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine the nature and extent of appellant's accepted conditions, appropriate treatment recommendations, and work restrictions.

In a May 30, 2023 disability note containing an illegible signature, a provider from Dr. DeMarco's office opined that appellant remained totally disabled from her September 8, 2022 work-related injury.

In a June 1, 2023 report, Dr. Sultan noted his review of the SOAF and appellant's medical record. He related findings from her November 28, 2022 left wrist MRI scan of left low-grade partial tear interosseous component of the scapholunate ligament and right wrist MRI scan findings of a longitudinal split of the extensor carpi ulnaris tendon at the distal forearm and proximal wrist with mild undersurface fraying involving the triangular fibrocartilage. Dr. Sultan examined appellant's right wrist, left wrist, gait, bilateral knees, and left ankle and reported essentially

normal findings. He opined that she had residual subjective complaints in regard to her right wrist, left knee, and left ankle, but her subjective complaints did not correspond with the objective examination findings from her physical examination that day, and did not confirm any residuals from the September 8, 2022 work injury. Thus, Dr. Sultan opined that appellant's orthopedic examination confirmed that she reached maximum medical improvement and no further medical treatment was needed. He also opined that her physical examination that day did not confirm any physical limitations resulting from the work-related injury. Thus, Dr. Sultan concluded that appellant had no residuals or disability resulting from the work-related conditions and that she was able to perform the activities of daily living and her work activities without restrictions. In an attached June 1, 2023 work capacity evaluation (Form OWCP-5c), he opined that appellant was capable of performing her usual job without restriction.

In a July 6, 2023 letter, OWCP provided Dr. Horowitz and Dr. DeMarco with a copy of Dr. Sultan's June 1, 2023 second opinion report and inquired whether they agreed with Dr. Sultan's opinion. It also requested that, if they believed that appellant continued to have residuals of the September 8, 2022 work injury, they should provide her current diagnoses and explain how those diagnoses are medically related to the September 8, 2022 work injury. OWCP afforded her physicians 30 days to respond.

OWCP received a March 20, 2023 form report wherein Dr. Horowitz diagnosed bilateral carpal tunnel syndrome. It also received a May 16, 2023 addendum report from Dr. Horowitz, wherein he reiterated appellant's diagnoses of bilateral carpal tunnel syndrome, bilateral trigger finger, and tears of the left scapholunate ligament, and tear of the extensor carpi ulnaris of the right wrist. He again concluded that these conditions were directly related to appellant's employment injury.

On August 10, 2023 OWCP issued a notice of proposed termination of appellant's wage-loss compensation and medical benefits based on the June 1, 2023 second opinion evaluation report of Dr. Sultan. It afforded her 30 days to submit additional evidence or argument challenging the proposed termination.

OWCP thereafter received a September 18, 2022 report, from Dr. Stacey Silver-Weber, a Board-certified emergency medicine specialist. Dr. Silver-Weber reported that appellant had a slip and fall at work on September 8, 2022 while performing her regular duties. She diagnosed unspecified injury of left knee, which she opined was causally related to appellant's September 8, 2022 work slip and fall.

In a July 20, 2023 report, Dr. DeMarco related appellant's physical examination findings including tenderness over the medial and lateral joint lines of the left knee, and positive talar tilt test, and positive anterior drawer of the left ankle. He diagnosed sprain of left ankle and sprain of the left knee. Dr. DeMarco noted that appellant was improving, but still had an overall marked partial disability of 75 percent. He indicated that she would follow up with hand consultation for both wrists. In a July 20, 2023 form report, Dr. DeMarco continued to hold appellant off work.

By decision dated September 27, 2023, OWCP terminated appellant's wage-loss compensation and medical benefits, effective that date, finding that the medical evidence of record established that she no longer had any residuals related to her accepted work-related medical

conditions or continued disability from work as a result of the September 8, 2022 employment injury. It accorded the weight of the medical evidence to the opinion of the second opinion physician, Dr. Sultan.

### **LEGAL PRECEDENT**

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of an employee's benefits.<sup>3</sup> After it has determined that, an employee has disability causally related to his or her federal employment, it may not terminate compensation without establishing that the disability has ceased, or that it is no longer related to the employment.<sup>4</sup> OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>5</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.<sup>6</sup> 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.<sup>7</sup>

### **ANALYSIS**

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective September 27, 2023.

OWCP based its termination of appellant's wage-loss compensation and medical benefits on the opinion of Dr. Sultan, OWCP's referral physician. It had referred her for a second opinion evaluation to determine the nature and extent of her bilateral wrist, left knee, and left ankle injuries relative to her September 8, 2022 employment injury, appropriate treatment recommendations, and work restrictions. In his report dated June 1, 2023, Dr. Sultan related essentially normal physical examination findings that day regarding appellant's right wrist, left wrist, bilateral knees, and left ankle. He opined that she had residual subjective complaints in regard to her right wrist, left knee, and left ankle, but her subjective complaints did not correspond with the objective examination findings from her physical examination that day, and did not confirm any residuals from the September 8, 2022 work injury. While Dr. Sultan noted the abnormal findings from appellant's November 28, 2022 MRI scan of the right wrist, he concluded that she no longer had residuals or

---

<sup>3</sup> *R.G.*, Docket No. 22-0165 (issued August 11, 2022); *D.G.*, Docket No. 19-1259 (issued January 29, 2020); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

<sup>4</sup> *See R.L.*, Docket No. 22-1175 (issued May 11, 2023); *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

<sup>5</sup> *R.L., id.*; *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

<sup>6</sup> *See A.M.*, Docket No. 22-0300 (issued April 10, 2023); *A.G.*, Docket No. 19-0220 (issued August 1, 2019); *A.P.*, Docket No. 08-1822 (issued August 5, 2009); *Kathryn E. Demarsh*, 56 ECAB 677 (2005); *Furman G. Peake*, 41 ECAB 361 (1990).

<sup>7</sup> *See A.G., id.*; *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002).

disability resulting from the work-related conditions and that she was able to perform the activities of daily living and her work activities without restrictions.

The factors that comprise the evaluation of medical opinion evidence include the opportunity for and thoroughness of physical examination, the accuracy, or completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.<sup>8</sup>

The Board finds that Dr. Sultan's opinion constitutes the weight of the medical opinion evidence. Dr. Sultan based his opinion on a proper factual and medical history and physical examination findings. He noted that appellant's physical examination indicated subjective findings, which did not correlate with objective findings and the history of appellant's employment injury. Dr. Sultan further opined that she was able to perform the activities of daily living and her work activities without restrictions. The Board finds that his opinion is sufficiently probative, rationalized, and based upon a proper factual background and, therefore, represents the weight of the medical evidence at the time of the September 27, 2023 termination decision.<sup>9</sup> Accordingly, OWCP properly relied on Dr. Sultan's second opinion report in terminating appellant's wage-loss compensation and medical benefits for the September 27, 2023 employment injury.<sup>10</sup>

In March 20, 2023 reports, Dr. Horowitz related appellant's physical examination findings and noted the accepted diagnosis of bilateral wrist sprain. He, however, failed to provide a well-rationalized opinion, with supporting objective evidence, to explain his conclusion that appellant's accepted wrist sprains had not resolved. In his March 20 and May 16, 2023 reports, Dr. Horowitz also related diagnoses of bilateral carpal tunnel syndrome, and bilateral trigger thumb, which were not accepted conditions, and he noted that appellant's November 28, 2022 MRI scan provided an impression of right wrist small tear of the left scapholunate ligament, as well as a small tear of the extensor carpi ulnaris in the right wrist. While he opined that these conditions were directly related to appellant's employment injury and that she remained 100 percent disabled, he offered no rationale to support his conclusions. Dr. Horowitz merely offered conclusory opinions. The Board has held that a report is of limited probative value regarding causal relationship if it is conclusory and does not contain medical rationale explaining how a given medical condition/disability was related to the accepted employment injury.<sup>11</sup> Thus, Dr. Horowitz' reports are insufficient to overcome the weight of the medical evidence accorded to Dr. Sultan's second opinion, or to create a conflict of medical opinion.

---

<sup>8</sup> *R.L.*, *supra* note 4; *K.R.*, Docket No. 22-0019 (issued July 11, 2022); *B.C.*, Docket No. 16-0978 (issued November 21, 2016); *Nicolette R. Kelstrom*, 54 ECAB 570 (2003); *Anna M. Delaney*, 53 ECAB 384 (2002); *see also G.I.*, Docket No. 14-1857 (issued September 9, 2015).

<sup>9</sup> *R.L.*, *id.*; *A.B.*, Docket No. 16-0480 (issued August 29, 2016).

<sup>10</sup> *J.T.*, Docket No. 20-1470 (issued October 8, 2021); *S.M.*, Docket No. 18-0673 (issued January 25, 2019); *see also A.F.*, Docket No. 16-0393 (issued June 24, 2016).

<sup>11</sup> *See Y.D.*, Docket No. 16-1896 (issued February 10, 2017) (a report is of limited probative value regarding causal relationship if it does not contain medical rationale describing the relationship between work factors and a diagnosed condition/disability).

OWCP also received a March 28, 2023 report, wherein Dr. DeMarco continued to diagnose left ankle sprain and left knee sprain causally related to the September 8, 2022 work injury based on appellant's physical examination findings. Dr. DeMarco opined that she remained 75 percent disabled. Following receipt of Dr. Sultan's June 1, 2023 report, OWCP also received a July 20, 2023 report from Dr. DeMarco, who again diagnosed sprain of left ankle and sprain of left knee based on appellant's physical examination findings and noted that appellant was improving, but still had an overall marked partial disability of 75 percent. However, Dr. DeMarco offered no rationale to support his conclusions that appellant's diagnosed left ankle sprain and left knee sprain had not resolved, that appellant's findings on physical examination were causally related to the September 8, 2022 work injury, and that appellant remained partially disabled. As noted, a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/disability was related to the accepted employment injury.<sup>12</sup> Thus, Dr. DeMarco's reports are insufficient to overcome the weight of the medical evidence accorded to Dr. Sultan's second opinion, or to create a conflict of medical opinion.

OWCP also received a September 18, 2022 report, wherein Dr. Silver-Weber diagnosed unspecified injury of left knee, which she opined was causally related to appellant's September 8, 2022 work slip and fall. However, she failed to provide a rationalized medical opinion explaining the causal relationship between a knee condition and the accepted September 9, 2022 employment injury.<sup>13</sup> Thus, Dr. Silver-Weber's report is insufficient to overcome the weight of the medical evidence accorded to Dr. Sultan's second opinion, or to create a conflict of medical opinion.

As the reports from appellant's treating physicians are insufficient to overcome the weight of the medical evidence accorded to Dr. Sultan's second opinion, or to create a conflict of medical opinion, the Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective September 27, 2023.

### CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective September 27, 2023.

---

<sup>12</sup> See *Y.D., id.*

<sup>13</sup> *J.P.*, Docket No. 20-0381 (issued July 28, 2020).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 27, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 10, 2024  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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