

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

M.P., Appellant	)	
	)	
and	)	<b>Docket No. 24-0580</b>
	)	<b>Issued: July 9, 2024</b>
<b>DEPARTMENT OF THE NAVY, U.S. NAVAL</b>	)	
<b>SUPPORT ACTIVITY PANAMA CITY FIRE &amp;</b>	)	
<b>EMERGENCY SERVICES DEPARTMENT,</b>	)	
<b>Panama City, FL, Employer</b>	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On May 8, 2024 appellant, through counsel, filed a timely appeal from an April 16, 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.

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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.*

## **ISSUES**

The issues are: (1) whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective August 14, 2023, as he no longer had disability or residuals causally related to his accepted February 1, 2022 employment injury; and (2) whether appellant has met his burden of proof to establish continuing disability or residuals on or after August 14, 2023, causally related to his accepted February 1, 2022 employment injury.

## **FACTUAL HISTORY**

On February 16, 2022 appellant, then a 39-year-old firefighter technician, filed a traumatic injury claim (Form CA-1) alleging that on February 1, 2022 he injured his right foot when he slipped and fell on wet stairs while in the performance of duty. OWCP accepted the claim for right plantar fascial fibromatosis, tarsal tunnel syndrome, and sprain of right foot. It paid appellant wage-loss compensation on the supplemental rolls from April 8, 2022 through August 13, 2023, and on the periodic rolls from August 14, 2022. Effective August 13, 2023, the employing establishment separated appellant from employment due to excessive absenteeism.

In a report dated May 10, 2022, Dr. Mary Sullivan, an osteopath Board-certified in family medicine, noted that she had conducted an evaluation. She diagnosed stress fracture of the right foot, nondisplaced fracture of the fifth metatarsal bone of the right foot, right lower limb tarsal tunnel syndrome, and plantar fasciitis of the right foot. Dr. Sullivan related that a March 15, 2022 magnetic resonance imaging (MRI) scan of appellant's right foot revealed "small fluid of 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, metatarsal joints, inflammation of the plantar soft tissues adjacent just lateral sesamoid bone at the first metatarsal head with mild bursitis."

On May 18, 2022 OWCP expanded the acceptance of the claim to include displaced fracture of fifth metatarsal bone, right foot closed fracture.

On May 24, 2022 OWCP referred appellant, along with the case record, an April 26, 2022 statement of accepted facts (SOAF), and a series of questions, to Dr. Stephen T. Enguidanos, a Board-certified orthopedic surgeon, for a second opinion examination. The April 26, 2022 SOAF did not include the newly-accepted condition of displaced fracture of fifth metatarsal bone, right foot closed fracture.

In a July 20, 2022 report, Dr. Enguidanos recounted appellant's history of injury and reviewed appellant's medical course. He provided examination findings, and assessed right plantar fascial fibromatosis, tarsal tunnel syndrome and resolved right foot sprain. Dr. Enguidanos opined that the work-related condition had not resolved as appellant continued to be symptomatic on examination over his right fifth metatarsal, and there was a need for further conservative treatment. He indicated that he did not perform any diagnostic testing, and while appellant indicated that a fifth metatarsal fracture had been diagnosed, there was no documentation or radiology reports of record to support a right fifth metatarsal fracture. Dr. Enguidanos opined that appellant was capable of working the light-duty assignment as outlined in the April 21, 2022 job offer with additional restrictions of wearing his pneumatic cam boot with minimal weight, and seated for greater than 70 percent per hour. In a July 25, 2022 work capacity evaluation (Form OWCP-5c), he set forth work restrictions for sedentary and light-duty work.

In a September 22, 2022 report, Dr. Sagar Shah, a Board-certified podiatrist, reported that the recent MRI scan performed two months prior did not show any acute fractures of the right foot. He continued to opine that appellant was totally disabled from work. Dr. Shah stated that he was unsure when appellant could return to work as a firefighter, noting that unless he was near 100 percent rehabilitated with no pain, there was a significant risk of injury to himself or others while on the job.

On September 29, 2022 OWCP requested clarification from Dr. Enguidanos with regard to appellant's work capacity. Of record was a new light-duty job offer dated September 28, 2022.

In an October 10, 2022 supplemental report, Dr. Enguidanos clarified that appellant's work restrictions remained unchanged. He opined that appellant was unable to meet the increased physical demands of the September 28, 2022 job offer, but could perform the duties in the April 21, 2022 job offer.

On December 8, 2022 OWCP determined that a conflict existed between Dr. Shah and Dr. Enguidanos. It referred him to Dr. Christo W. Koullisis, a Board-certified orthopedic surgeon, for an impartial medical examination. A November 28, 2022 SOAF listed all of the accepted conditions.

An April 21, 2023 MRI scan of appellant's right foot revealed normal appearance of the plantar fascia with no abnormal edema involving the musculature of the foot. No fracture of bone contusion was noted.

In a May 10, 2023 report, Dr. Koullisis reviewed the history of appellant's February 1, 2022 employment injury and diagnostic studies, including the February 2, 2022 x-ray and March 15, 2022 MRI scan. He set forth his examination findings, noting that the ankle, hind, mid and forefoot were stable and circumference of the midfoot was equal, bilaterally. Dr. Koullisis opined that, initially there appeared to be a stress reaction for right fifth metatarsal, which was not borne out by the March 15, 2022 MRI scan, but rather mild soft tissue inflammation about the lateral sesamoid and first metatarsal head, medial aspect of the foot, not laterally. Based on his examination, he opined that the work-related conditions and residuals related to the accepted work-related conditions had resolved, and there was no further diagnostic or treatment modalities as a result of the February 1, 2022 work injury. Dr. Koullisis further opined that appellant was capable of returning to his date-of-injury job as a firefighter, including driving to and from work, based upon his normal gait and unremarkable ankle and hind, mid, and forefoot evaluation, as well as review of the diagnostic studies.

On July 6, 2023 OWCP advised appellant of its proposed termination of his wage-loss compensation and medical benefits as the evidence established that he no longer had employment-related disability or residuals causally related to his February 1, 2022 employment injury. It afforded him 30 days to submit additional evidence or argument if he disagreed with the proposed termination.

In a July 17, 2023 report, Dr. Shah placed appellant on limited/decreased weight bearing and no strenuous activity due to his right fifth metatarsal stress reaction/pain.

By decision dated August 14, 2023, OWCP terminated appellant's wage-loss compensation and medical benefits, effective that date. It found that the opinion of Dr. Koullisis, the impartial medical examiner (IME), represented the special weight of the evidence and established that he no longer had disability or residuals causally related to his accepted February 1, 2022 employment injury.

On August 22, 2023 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Dr. Shah continued to opine that appellant was totally disabled and required physical therapy to help strengthen and stabilize his foot.

A hearing was held on December 5, 2023.

By decision dated January 23, 2024, OWCP's hearing representative affirmed OWCP's August 14, 2023 termination decision.

In a February 21, 2024 report, Dr. Nathaniel Writers, a podiatric surgery specialist, reported that appellant had been under his care since October 26, 2023 for chronic fifth metatarsal fracture with malunion/nonunion of right foot, visible on MRI scan. Based on his interviews and treatment with appellant, he opined that those conditions had either arisen or worsened over the last year, and directly impacted appellant's ability to perform his firefighter position. Dr. Writers indicated that appellant could not apply pressure to his foot to run, climb, carry heavy equipment, or perform rescue operations. Appellant was unable to wear personal protective equipment, and could not aid others due to his foot injury. As a result of those difficulties, Dr. Writers opined that appellant was totally disabled for work from his firefighter position.

In a February 22, 2024 note, Dr. Winters opined that appellant reached maximum medical improvement on October 25, 2023.

By decision dated April 16, 2024, OWCP denied modification of the January 23, 2024 decision.

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

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.<sup>3</sup> It may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the

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<sup>3</sup> See *L.M.*, Docket No. 22-0342 (issued August 25, 2023); *T.C.*, Docket No. 20-1163 (issued July 13, 2021); *Paul L. Stewart*, 54 ECAB 824 (2003).

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.<sup>6</sup> To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.<sup>7</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>8</sup> In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>9</sup>

### 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 August 14, 2023.

OWCP accepted the claim for right plantar fascial fibromatosis, tarsal tunnel syndrome, sprain of right foot, and displaced fracture of fifth metatarsal bone, right foot closed fracture. On May 24, 2022 it referred appellant to Dr. Enguidanos for a second opinion examination. However, the April 26, 2022 SOAF provided to Dr. Enguidanos did not include the May 18, 2022 newly-accepted condition of displaced fracture of fifth metatarsal bone, right foot closed fracture.

It is OWCP's responsibility to provide a complete and proper frame of reference for a physician by preparing a SOAF.<sup>10</sup> Its procedures provide that the claims examiner is responsible for ensuring that the SOAF is correct, complete, unequivocal, and specific. It should include a complete record of all pertinent facts related to the injury or medical condition. The omission of a critical fact diminishes the validity of a medical opinion or decision as much as an incorrect

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<sup>4</sup> A.G., Docket No. 18-0749 (issued November 7, 2018); *see also I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

<sup>5</sup> *R.R.*, Docket No. 19-0173 (issued May 2, 2019); *T.P.*, 58 ECAB 524 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

<sup>6</sup> *L.K.*, Docket No. 20-0443 (issued August 8, 2023); *E.J.*, Docket No. 20-0013 (issued November 19, 2020); *L.W.*, Docket No. 18-1372 (issued February 27, 2019); *Furman G. Peake*, 41 ECAB 361 (1990).

<sup>7</sup> *A.J.*, Docket No. 18-1230 (issued June 8, 2020); *R.P.*, Docket No. 18-0900 (issued February 5, 2019).

<sup>8</sup> 5 U.S.C. § 8123(a).

<sup>9</sup> *See J.P.*, Docket No. 23-0075 (issued March 26, 2023); *C.M.*, Docket No. 20-1647 (issued October 5, 2021); *James P. Roberts*, 31 ECAB 1010 (1980).

<sup>10</sup> *A.G.*, Docket No. 20-1087 (issued December 31, 2020); *N.W.*, Docket No. 16-1890 (issued June 5, 2017); *K.V.*, Docket No. 15-0960 (issued March 9, 2016).

statement.<sup>11</sup> When an OWCP medical adviser, second opinion specialist, or referee physician renders a medical opinion based on a SOAF which is incomplete, 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.<sup>12</sup> Consequently, OWCP erred in relying on the July 20 and October 10, 2022 second opinion reports of Dr. Enguidanos to find a conflict in medical opinion with Dr. Shah.<sup>13</sup> Accordingly, OWCP's referral to Dr. Koullisis is that of second opinion physician as opposed to an IME.

In his May 10, 2023 report, Dr. Koullisis indicated that he had reviewed appellant's March 15, 2022 MRI scan, and that stress reaction for right fifth metatarsal, was not borne out by the March 15, 2022 MRI scan. He explained that this MRI scan did indicate mild soft tissue inflammation about the lateral sesamoid and first metatarsal head, medial aspect of the foot, not laterally. The Board finds that Dr. Koullisis' opinion contradicts the SOAF, which makes clear that OWCP had accepted, as employment related, right displaced fracture of the fifth metatarsal bone. As noted above, the Board has held that if a physician selected by OWCP 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.<sup>14</sup> Dr. Koullisis disregarded the accepted condition noted in the SOAF, and opined that appellant had a soft-tissue injury rather than a displaced fracture of the fifth metatarsal bone, right foot closed fracture. The Board has found that, if a physician does not base his opinion on the SOAF, his opinion lacks a proper factual background, and is not properly rationalized.<sup>15</sup>

As the medical evidence of record is insufficient to establish that appellant no longer had disability or residuals causally related to his accepted employment injury as of August 14, 2023, the Board finds that OWCP failed to meet its burden of proof.

### CONCLUSION

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective August 14, 2023.<sup>16</sup>

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<sup>11</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Statement of Accepted Facts*, Chapter 2.809.4a(2) (September 2009).

<sup>12</sup> *Id.* at Chapter 2.809.4a(4); *H.L.*, Docket No. 22-1114 (issued February 27, 2024); *M.C.*, Docket No. 18-1199 (issued April 5, 2019).

<sup>13</sup> *H.L.*, *id.*; *see C.S.*, Docket No. 20-1475 (issued October 4, 2021); *P.C.*, Docket No. 20-0935 (issued February 19, 2021).

<sup>14</sup> *Supra* note 12. *See also R.L.* Docket No. 24-0475 (issued June 7, 2024); *D.O.*, Docket No. 17-0911 (issued February 2, 2018).

<sup>15</sup> *See R.L.*, *id.*; *V.H.* Docket No. 17-0439 (issued December 13, 2017).

<sup>16</sup> In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 16, 2024 decision of the Office of Workers' Compensation Programs is reversed.

Issued: July 9, 2024  
Washington, DC

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

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

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