

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

S.A., Appellant)	
)	
and)	Docket No. 24-0353
)	Issued: May 17, 2024
U.S. POSTAL SERVICE, POST OFFICE,)	
Jamaica, 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
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On February 20, 2024 appellant filed a timely appeal from an August 22, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ 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 A claimant has 180 days from the date of OWCP's decision to timely file an appeal. 20 C.F.R. § 501.3(e). In this case, the 180-day period from the August 22, 2023 decision expired on Sunday, February 18, 2024. If the last day to file an appeal falls on a Saturday, Sunday, or Federal holiday, the 180-day period runs until the close of the next business day. 20 C.F.R. § 501.3(f)(2). The Board notes that February 19, 2024 was a Federal holiday. As the appeal in this case was received by the Board on Tuesday, February 20, 2024 it was timely filed.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that following the August 22, 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 November 15, 2022, as she no longer had disability or residuals causally related to her accepted September 24, 2012 employment injury; and (2) whether appellant has met her burden of proof to establish that she had continuing disability or residuals on or after November 15, 2022, causally related to her accepted September 24, 2012 employment injury.

FACTUAL HISTORY

On September 25, 2012 appellant, then a 36-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on September 24, 2012, she sustained injuries to her head, elbow and left side of her body when her vehicle was struck from behind by another vehicle while in the performance of duty. She stopped work on September 24, 2012. OWCP accepted the claim for sprains of the left elbow, neck, and lumbar region. On February 12, 2015 it expanded the acceptance of the claim to include conditions of other joint derangement of left shoulder region and sprain of the left shoulder and upper arm. OWCP paid appellant wage-loss compensation on the supplemental rolls commencing November 9, 2012, and on the periodic rolls commencing June 2, 2013.

In a March 1, 2021 report, Dr. Farshad D. Hannanian, a neurology specialist, opined that appellant remained totally disabled due to the September 24, 2012 work-related accident. He recommended continued physical therapy once a month, orthopedic follow-up, pain management follow-up and a reevaluation in 8 to 12 weeks. Following that report, Dr. Hannanian provided attending physician's reports (Form CA-20) and disability certificates dated from July 19, 2021, through August 29, 2022 which indicated that appellant was disabled due to her September 24, 2012 work injury. In the Form CA-20 dated July 19, 2021, he noted appellant's diagnoses as left shoulder rotator cuff tear, and lumbar disc herniation.

On August 30, 2022 OWCP referred appellant for a second opinion evaluation with Dr. Leon Sultan, a Board-certified orthopedic and osteopathic surgeon, to determine whether appellant had any remaining residuals from the accepted conditions. Dr. Sultan was provided with an August 29, 2022 statement of accepted facts (SOAF), a list of questions and appellant's medical record. OWCP referenced Dr. Hannanian's diagnoses of left shoulder rotator cuff tear and lumbar disc herniation, and requested that he provide a rationalized opinion on whether the claim should be expanded to include those additional conditions and, if so, whether they had resolved.

In a September 29, 2022 report, Dr. Sultan noted his review of the SOAF and appellant's medical records, which included December 30, 2012 cervical spine, lumbar spine, and left shoulder magnetic resonance imaging (MRI) testing. He also noted appellant's other nonwork-related conditions and set forth detailed physical examination findings. Dr. Sultan found that appellant's objective examination with regards to her cervical spine, thoracolumbar spine, left shoulder and left elbow were normal, and opined that there were no residual orthopedic conditions related to the September 24, 2012 work injury. In response to OWCP's question of whether the claim should be expanded to include additional conditions of rotator cuff tear left shoulder and lumbar disc herniation as a result of the September 24, 2012 work injury, whether those conditions

were caused or aggravated by the work injury and, if so, whether they had resolved, Dr. Sultan indicated that appellant's left shoulder rotator cuff tear and lumbar disc herniation were no longer clinically evident as her left shoulder and thoracolumbar spine orthopedic examination revealed normal examination findings. He opined that while appellant's left shoulder condition and lower back condition "may have been caused" by the September 24, 2012 work injury, those conditions were in total remission and, from an orthopedic point of view, had clinically resolved. Dr. Sultan opined that appellant was at maximum medical improvement with regards to the September 24, 2012 work injury and was no longer disabled secondary to the September 24, 2012 work injury. He further indicated that appellant currently has a cardiovascular condition consistent with unexplained tachycardia which should be handled by a cardiologist. In his report and in an accompanying September 29, 2022 work capacity evaluation form (OWCP-5c), Dr. Sultan opined that aside from her unexplained tachycardia, appellant could perform her full duties as a letter carrier with regard to her neck, lower back, left shoulder and left elbow, without restrictions.

On October 14, 2022 OWCP advised appellant that it proposed to terminate her wage-loss compensation and medical benefits, as she no longer had residuals or disability causally related to her accepted September 24, 2012 employment injury. It informed her that the weight of the medical opinion evidence rested with the report from Dr. Sultan and afforded appellant 30 days to submit evidence and argument challenging the proposed action.

In response to the proposed termination, OWCP received an October 24, 2022 disability note, wherein Dr. Hannanian continued to opine that appellant was disabled due to her September 24, 2012 work injury. It also received test results unrelated to appellant's orthopedic conditions.

By decision dated November 15, 2022, OWCP terminated appellant's wage-loss compensation and medical benefits, effective November 15, 2022. It found that the weight of the medical evidence rested with the September 29, 2022 report of Dr. Sultan, the second opinion physician.

In a November 22, 2022 statement, appellant related that she had nerve and body pain from the September 24, 2012 work accident. She also indicated that she had other health issues, for which she has been seen by cardiologists, hematologists, and endocrinologists.

OWCP continued to receive disability notes from Dr. Hannanian which opined that appellant was disabled due to her September 24, 2022 work injury.

In a December 2, 2022 report, Dr. John Akhnoukh, a Board-certified physiatrist, noted the history of the September 24, 2012 work incident. He diagnosed cervical radiculopathy, lumbar radiculopathy, and lumbar facet arthropathy consistent with history and physical examination.

In a December 9, 2022 report, Dr. Alwasi Achampong, an osteopath and internal medicine specialist, indicated that appellant had several active nonorthopedic diagnoses, as well as left shoulder pain. He opined that she was disabled from work until further notice.

OWCP continued to receive medical evidence.

In a January 13, 2023 note, Dr. Christopher K. Haas, a chiropractor, indicated that appellant was diagnosed with cervical/lumbar disc disorder, radiculitis, myospasms, and segmental dysfunction. He opined that she was totally disabled from January 13 through February 13, 2023.

In a January 20, 2023 report, Dr. Akhnoukh indicated that the MRI scan of appellant's cervical spine showed multilevel disc degeneration and disc protrusions, and the MRI scan of the lumbar spine showed disc protrusions from L3-S1 and multilevel facet hypertrophy. He indicated that she would continue with physical therapy and set forth a plan for cervical and lumbar epidural steroid injections. Dr. Akhnoukh indicated, in a January 26, 2023 note, appellant could work light duty less than one hour per day with restrictions due to her cervical radiculopathy and lumbar radiculopathy.

On May 31, 2023 appellant requested reconsideration. In support of this request OWCP received an April 14, 2023 report from a physician assistant. Appellant's continuing left shoulder complaints were noted. A March 17, 2023 MRI scan of her left shoulder was read as revealing moderate supraspinatus and infraspinatus with punctuate tearing of the footprint confluence fibers, mild subscapularis tendinosis, and fissuring of the posterior labrum.

In an April 17, 2023 note, Dr. Hannanian continued to relate that appellant was disabled due to her accepted September 24, 2012 employment accident.

In a May 20, 2023 report, Dr. Robert Klass, a chiropractic physician, related that appellant had been under care in his clinic for neuromusculoskeletal disorders. He indicated that since clinical questions continued to exist regarding the etiology of her disorder, further diagnosis evaluation should be completed through a nerve conduction velocity (NCV) study and electromyograms (EMG).

In a May 5, 2023 note, Dr. Akhnoukh outlined appellant's medical restrictions due to cervical radiculopathy and lumbar radiculopathy.

By decision dated August 22, 2023, OWCP denied modification of its prior 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 determined that, an employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to

⁴ See *S.P.*, Docket No. 21-1163 (issued March 30, 2022); *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 Its 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 compensation.⁷ In order 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.⁸

ANALYSIS -- ISSUE 1

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective November 15, 2022, as she no longer had disability or residuals causally related to her accepted September 24, 2012 employment injury.

OWCP referred appellant to Dr. Sultan for a second opinion examination to determine the status of her accepted conditions and whether appellant had additional conditions causally related to her September 24, 2012 employment injury. In his September 29, 2022 report, Dr. Sultan provided an equivocal opinion in response to OWCP's question of whether the case should be expanded to include additional conditions of rotator cuff tear left shoulder and lumbar disc herniation as a result of the September 24, 2012 work injury. He opined that appellant's left shoulder condition and lower back condition "may have been caused" by the September 24, 2012 work injury, but those conditions were in total remission and, from an orthopedic point of view, had clinically resolved. The Board has long held that an opinion which is equivocal or speculative in nature is of limited probative value regarding the issue of causal relationship.⁹

Once OWCP undertook development of the evidence by referring appellant's case for a second opinion evaluation, it was required to obtain a proper evaluation and report regarding the issue in this case.¹⁰ Since Dr. Sultan's opinion as to whether the case should be expanded to include left shoulder rotator cuff tear and lumbar disc herniation is equivocal, his opinion is of

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 *R.P., supra* note 5; *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁷ See *R.P., supra* note 5; *Kathryn E. Demarsh*, 56 ECAB 677 (2005); *A.P.*, Docket No. 08-1822 (issued August 5, 2009). *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁸ See *R.P., supra* note 5; *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002); *Furman G. Peake, id.*

⁹ See *L.L.*, Docket No. 21-0981 (issued July 1, 2022); *C.A.*, Docket No. 21-0601 (issued November 15, 2021); *J.P.*, Docket No. 19-0216 (issued December 13, 2019); *T.M.*, Docket No. 08-0975 (issued February 6, 2009).

¹⁰ *J.M.*, Docket No. 21-0569 (issued December 6, 2021); see *R.L.*, Docket No. 20-1069 (issued April 7, 2021); *W.W.*, Docket No. 18-0093 (issued October 9, 2018); *Peter C. Belkind*, 56 ECAB 580 (2005).

diminished probative value regarding OWCP's termination of appellant's wage-loss compensation and medical benefits.¹¹

As the medical evidence of record is insufficient to establish that she no longer had disability or residuals causally related to her accepted September 24, 2012 employment injury, the Board finds that OWCP failed to meet its burden of proof.¹²

CONCLUSION

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective November 15, 2022, as she no longer had disability or residuals causally related to her accepted September 24, 2012 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the August 22, 2023 decision of the Office of Workers' Compensation Programs is reversed.

Issued: May 17, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

¹¹ *J.H.*, Docket No. 23-0701 (issued December 28, 2023); *P.E.*, Docket No. 19-0837 (issued October 20, 2020).

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