

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

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C.B., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Englewood, NJ, Employer)
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Docket No. 22-0953
Issued: November 22, 2024

Appearances:

Thomas R. Uliase, Esq., for the appellant¹

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On June 6, 2022 appellant, through counsel, filed a timely appeal from a December 28, 2021 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 December 28, 2021 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 properly terminated appellant's wage-loss compensation and medical benefits effective June 4, 2021, as he no longer had disability or residuals causally related to his accepted June 29, 2018 employment injury; and (2) whether appellant has met his burden of proof to establish continuing employment-related disability or residuals after June 4, 2021 causally related to the accepted June 29, 2018 employment injury.

FACTUAL HISTORY

On July 9, 2018 appellant, then a 42-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on June 29, 2018 the emergency brake lever snapped and caught his pulcruc on the hand while in the performance of duty. He stopped work that day and has not returned. OWCP accepted the claim for puncture wound right index finger, right wrist sprain, and a triangular fibrocartilage complex (TFCC) tear of right wrist.⁴ It paid appellant wage-loss compensation on its supplemental rolls effective August 14, 2018, and on the periodic rolls as of February 28, 2021.

Appellant was treated by Dr. Joseph M. Bellapianta, a Board-certified orthopedic surgeon, who provided conservative treatment including physical therapy, for his accepted work-related conditions and nonwork-related right upper extremity conditions. In progress reports, Dr. Bellapianta opined that appellant's injuries to his neck, right shoulder, right elbow, right hand/wrist (including the pulcruc section of the right hand) were related to the June 29, 2018 work injury as he was pain free in those areas prior to the accepted injury. He continued to hold appellant off work.

On December 17, 2018 and April 1, 2019 OWCP received requests for right wrist surgery from Dr. Bellapianta, which it authorized on April 8, 2019. Appellant, however, did not undergo the approved surgery but continued to engage in physical therapy for both his accepted work-related and nonwork-related conditions. Dr. Bellapianta continued to hold appellant off work.

On August 7, 2019 OWCP referred appellant to Dr. Frank Corrigan, a Board-certified orthopedic and hand surgeon, for a second opinion examination. In a report dated September 5, 2019, Dr. Corrigan reviewed the statement of accepted facts (SOAF), history of the June 29, 2018 work injury and appellant's medical treatment. He addressed the accepted right hand/wrist conditions and opined that appellant had not exhausted all conservative treatment in order to consider surgery. He explained that appellant's pain and the tender points noted on examination were not all focal to the ulnar side of the wrist at the TFCC and recommended a corticosteroid injection to evaluate whether this was the true source of his pain. Dr. Corrigan further explained that if a corticosteroid injection into the TFCC did not provide at least short-lived alleviation of his symptoms, then surgical intervention aimed at correcting the magnetic resonance imaging

⁴ By decision dated September 4, 2018, OWCP denied expansion of the acceptance of the claim to include the conditions of cervical sprain, cervical strain, impingement of right shoulder, bursitis of right shoulder, strain of right arm, strain of right rotator cuff and lateral epicondylitis of right elbow as the medical evidence failed to provide a well-rationalized medical explanation as to how those conditions were causally related to the June 29, 2018 employment injury.

(MRI) abnormality of the TFCC tear was unlikely to resolve his symptoms. Dr. Corrigan opined that appellant could perform full-time modified-duty, medium category.

In an October 25, 2019 letter of medical necessity, Dr. Bellapianta opined that appellant could not return to work. He continued to opine that appellant's neck, right shoulder, right elbow and right-hand injuries were related to the work event as he was pain free in those areas prior to the employment injury.

On November 13, 2019 Dr. Bellapianta performed a right wrist injection which appellant reported helped "a little bit with the pain." He continued to opine that appellant's right shoulder, neck, right elbow and right wrist/hand pain were causally related to the June 29, 2018 work injury. In a January 29, 2020 report, Dr. Bellapianta also advised that appellant had exhausted conservative treatment for his right wrist and that a right wrist 1st dorsal compartment release with arthroscopy TFCC repair *versus* debridement was medically necessary due to the injuries. Appellant remained off work.

In a February 20, 2020 letter of medical necessity, Dr. Bellapianta noted the dates he examined appellant and indicated that appellant was unable to return to work due to an upcoming surgery. He continued to opine that appellant's injuries to his neck, right shoulder, right elbow and right hand/wrist (including the purlicue section of right hand) were causally related to the June 29, 2018 work injury as he was pain free in those areas prior thereto. In a February 26, 2020 report, Dr. Bellapianta continued to indicate that it was medically necessary for right wrist/hand 1st dorsal compartment release, noting that appellant had exhausted all conservative measures.

On June 18, 2020 OWCP arranged another second opinion evaluation with Dr. Corrigan and prepared an undated SOAF. In a July 30, 2020 report, Dr. Corrigan reviewed the SOAF, appellant's medical history and the findings in his earlier report. He noted that appellant did not undergo surgery to his wrist but was provided physical therapy and corticosteroid injections after which his symptoms improved. Dr. Corrigan indicated that appellant did not exhibit any symptoms or examination findings of TFCC pathology, *i.e.*, no ulnar-sided wrist tenderness over the TFCC, and the only positive finding with regard to the right wrist was some mild mid dorsal wrist tenderness, which did not relate to TFCC pathology, and there was no reported abnormal finding on the September 4, 2018 MRI of the right wrist that corresponded to that anatomic location. Thus, based on his review of the medical records and physical examination findings, he opined that appellant no longer suffered disabling residuals of the accepted conditions and had reached maximum medical improvement (MMI). From an orthopedic standpoint, Dr. Corrigan further opined that there was no medical necessity for ongoing treatment, to include surgery, injections, medications, physical therapy, *etc.*, as they would not provide any additional clinical improvement. He indicated that surgical intervention for the TFCC, aimed at correcting the MRI abnormality only, was not reasonable or medically appropriate. Dr. Corrigan also opined that appellant was capable of performing his full-duty regular job with no restrictions.

In an August 18, 2020 letter of medical necessity, Dr. Bellapianta opined that appellant was unable to work until he underwent surgery. He opined that appellant's injuries were related to the June 29, 2018 work injury as he was pain free in those areas prior to that injury. Dr. Bellapianta also completed a work capacity evaluation (Form OWCP-5c) noting that appellant was unable to work.

On September 15, 2020 OWCP determined that there was a conflict in medical opinion between Dr. Corrigan and Dr. Bellapianta regarding the need for surgery, further treatment and disability. In a December 8, 2020 letter, it informed appellant that there was a conflict in the medical opinion evidence and referred him to Dr. Chukueke Tobenna Okezie, a Board-certified orthopedic surgeon, to serve as the impartial medical examiner (IME) to resolve the conflict in the medical opinion evidence.

In a report dated March 15, 2021, Dr. Okezie conducted a physical examination and reviewed appellant's medical history and SOAF. He set forth findings based on appellant's physical examination, noting that the right wrist had no swelling or deformity; that there were no obvious scars in the right hand; that there was full symmetric wrist motion; and that there was no snuffbox, 1st dorsal compartment or ulnar-sided tenderness. Dr. Okezie noted that appellant's only tenderness was dorsally in the first web space and that his finger motion was full. He advised that the present examination findings were unremarkable three years after injury and there was no basis for any significant acute or long-term injury, noting that appellant had had a generous amount of treatment and there was no evidence that required intervention. Dr. Okezie explained that there was no surgical diagnosis to support release of the 1st dorsal compartment as appellant had a negative Finkelstein's test and did not require a brace. He acknowledged the MRI finding of partial radial side TFCC tear but opined that it was not clinically correlated and would be considered a normal variant and irrelevant. Dr. Okezie reiterated that there was no indication for surgery based on the dubious clinical relevance of the MRI findings in the TFCC, given they were not clinically correlated and the negative Finkelstein's test. He advised that appellant did not have the necessary diagnoses to support any surgery and that surgery could be potentially detrimental. Dr. Okezie opined that there was no evidence that appellant had any current disability due to the June 29, 2018 employment injury, based on the normal clinical examination, his physical therapy notes demonstrated normal strength and range of motion, and the diagnostic studies did not show any structural traumatic injury. He advised that appellant had reached MMI and no further medical treatment was warranted, explaining that he had extensive physical therapy and no objective indication for surgery. Dr. Okezie agreed with the medical opinions of Dr. Corrigan and concluded that appellant could return to full unrestricted duties. He completed a Form OWCP-5c advising that appellant could return to his date-of-injury job.

By notice dated April 23, 2021, OWCP advised appellant that it proposed to terminate his wage-loss compensation and medical benefits based on the report of the IME, Dr. Okezie. It found that the special weight of the medical opinion evidence rested with his opinion that all work-related residuals and disability causally related to the June 29, 2018 employment injury had resolved and afforded appellant 30 days to submit additional evidence or argument if he disagreed with the proposed termination.

In response, OWCP received the first page of counsel's May 19, 2021 arguments objecting to the use of Dr. Okezie's opinion to terminate appellant's wage-loss compensation and medical benefits.

By decision dated June 4, 2021, OWCP terminated appellant's wage-loss compensation and medical benefits, effective June 4, 2021. It found that the opinion of Dr. Okezie, the IME, represented the special weight of the evidence and established that he had no further disability or residuals due to his accepted June 29, 2018 work injury.

On June 10, 2021 appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review. A telephonic hearing was held on October 14, 2021. Counsel presented arguments as to why Dr. Okezie's IME report could not hold the special weight of the medical evidence and that the SOAF was incomplete and inaccurate.

In a June 5, 2021 report, Dr. Bellapianta maintained his opinion that appellant was in need of right wrist and finger surgery due to his pain with repetitive motion. He advised that returning to work without proper surgical procedure would cause further damage and further delay returning to work. Dr. Bellapianta noted that a repeat May 21, 2021 MRI of the right wrist confirmed the presence of a TFCC tear.

Copies of the May 21, 2021 MRI reports of the right wrist and right shoulder were also received. The right wrist MRI showed fraying of the TFCC, likely degenerative.

By decision dated December 28, 2021, an OWCP hearing representative affirmed the June 4, 2021 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.⁵ 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 the employment.⁶ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁷

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."⁸ In situations where there exist opposing reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background must be given special weight.⁹

⁵ *R.M.*, Docket No. 21-1150 (issued April 5, 2022); *R.H.*, Docket No. 19-1064 (issued October 9, 2020); *M.M.*, Docket No. 17-1264 (issued December 3, 2018).

⁶ *R.M.*, *id.*; *A.T.*, Docket No. 20-0334 (issued October 8, 2020); *E.B.*, Docket No. 18-1060 (issued November 1, 2018).

⁷ *R.M.*, *id.*; *C.R.*, Docket No. 19-1132 (issued October 1, 2020); *G.H.*, Docket No. 18-0414 (issued November 14, 2018).

⁸ 5 U.S.C. § 8123(a); *J.K.*, Docket No. 18-1250 (issued June 25, 2019); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

⁹ 20 C.F.R. § 10.321; *M.R.*, Docket No. 19-0518 (issued September 12, 2019); *T.D.*, Docket No. 17-1011 (issued January 17, 2018).

When OWCP obtains an opinion from an IME for the purpose of resolving a conflict in medical opinion, and the IME's opinion requires clarification or elaboration, OWCP must secure a supplemental report from the specialist to correct the defect in the original report.¹⁰

ANALYSIS -- ISSUE 1

The Board finds that OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective June 4, 2021.

OWCP properly determined that a conflict in medical opinion existed between Dr. Corrigan and Dr. Bellapianta regarding appellant's need for surgery, further treatment and disability status. It referred him to Dr. Okezie for an impartial medical examination to resolve the conflict in medical opinion pursuant to 5 U.S.C. § 8123(a).

In his March 15, 2021 report, Dr. Okezie advised that the present examination findings were unremarkable three years after injury and there was no basis for any significant acute or long-term injury, noting that appellant had had a generous amount of treatment and there was no evidence that required intervention. While he acknowledged the MRI finding of partial radial side TFCC tear, he opined that it was not clinically correlated and would be considered a normal variant and irrelevant. Dr. Okezie reiterated that there was no indication for surgery based on the dubious clinical relevance of the MRI findings in the TFCC, given they were not clinically correlated and the negative Finkelstein's test. He advised that appellant did not have the necessary diagnoses to support any surgery and that surgery could be potentially detrimental. Dr. Okezie further opined that there was no evidence that appellant had any current disability due to the June 29, 2018 employment injury, based on the normal clinical examination, his physical therapy notes demonstrated normal strength and range of motion, and the diagnostic studies did not show any structural traumatic injury; that appellant had reached MMI and no further medical treatment was warranted; and that he could return to full unrestricted duties at his date-of-injury job.

The Board finds that Dr. Okezie's opinion is not entitled to the special weight afforded an IME as he failed to accept the facts as presented in the SOAF in rendering his opinion. In the March 15, 2021 report, Dr. Okezie acknowledged the MRI finding of partial radial side TFCC tear, but opined that it was not clinically correlated and would be considered a normal variant and irrelevant. The SOAF, however, set forth OWCP's acceptance of TFCC tear of right wrist.

OWCP's procedures and Board precedent dictate that when an OWCP medical adviser, second opinion specialist, or IME 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.¹¹ The Board has explained that the report of an IME who disregards a critical element of the SOAF and disagrees with the medical basis for acceptance of a condition is defective and insufficient to resolve the

¹⁰ See *T.K.*, Docket No. 22-0334 (issued July 13, 2022); *R.T.*, Docket No. 20-0081 (issued June 24, 2020); *Raymond A. Fondots*, 53 ECAB 637, 641 (2002); *Nancy Lackner (Jack D. Lackner)*, 40 ECAB 232 (1988); *Ramon K. Ferrin, Jr.*, 39 ECAB 736 (1988).

¹¹ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3 (October 1990). See also *S.D.*, Docket No. 19-1924 (issued November 16, 2020); *D.E.*, Docket No. 17-1794 (issued April 13, 2018); *K.V.*, Docket No. 15-0960 (issued March 9, 2016); *Paul King*, 54 ECAB 356 (2003).

existing conflict of medical opinion evidence.¹² Dr. Okezie's report is of diminished probative value as his opinion did not rely on the SOAF and it contradicted critical elements of the SOAF. The Board notes that it is the function of a medical expert to give an opinion only on medical questions, not to find facts.¹³ As Dr. Okezie failed to rely on the SOAF, his report is not based on an accurate history.¹⁴ His opinion is thus insufficient to resolve the existing conflict in medical opinion evidence.¹⁵

The Board has held that, when OWCP obtains an opinion from an IME for the purpose of resolving a conflict in the medical evidence and the IME's opinion requires clarification or elaboration, it must secure a supplemental report to correct the defect in his or her original report.¹⁶

As OWCP did not obtain a report from Dr. Okezie, or another IME, regarding appellant's disability status and need for further medical treatment, based on the SOAF, it did not meet its burden of proof to terminate appellant's wage-loss and medical benefits as of June 4, 2021.¹⁷

CONCLUSION

The Board finds that OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation effective June 4, 2021 as he no longer had disability causally related to his June 29, 2018 employment injury.¹⁸

¹² *S.D., id.; M.D.*, Docket No. 18-0468 (issued September 4, 2018).

¹³ *M.D., id.*

¹⁴ *V.K.*, Docket No. 19-0422 (issued June 10, 2020); *Douglas M. McQuaid*, 52 ECAB 382 (2001).

¹⁵ *V.K., id.*

¹⁶ See *supra* note 10; see also *supra* note 11 at Part 2 -- Claims, *Developing and Evaluation Medical Evidence*, Chapter 2.810.11(c)(1)-(2) (September 2010).

¹⁷ *Id.*

¹⁸ In light of the Board's disposition of Issue 1, the Board finds that Issue 2 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the December 28, 2021 decision of the Office of Workers' Compensation Programs is reversed.

Issued: November 22, 2024
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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