

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

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M.M. ( <i>nee B.</i> ), Appellant	)	
	)	
and	)	<b>Docket No. 24-0804</b>
	)	<b>Issued: November 1, 2024</b>
DEPARTMENT OF VETERANS AFFAIRS,	)	
OKLAHOMA CITY VA MEDICAL CENTER,	)	
Oklahoma City, OK, Employer	)	
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*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 August 1, 2024 appellant filed a timely appeal from a July 23, 2024 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>

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

<sup>2</sup> The Board notes that following the July 23, 2024 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 caserecord 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 July 23, 2024, as she no longer had disability or residuals causally related to her accepted January 26, 2021 employment injury.

## **FACTUAL HISTORY**

On March 10, 2022 appellant, then a 46-year-old medical records technician, filed a traumatic injury claim (Form CA-1) alleging that on January 26, 2021 she developed medical conditions due to an adverse reaction to her second COVID-19 vaccine shot, while in the performance of duty. By decision dated October 6, 2022, OWCP accepted the claim for adverse effect of other viral vaccines, generalized muscle weakness, bilateral ankle effusion, other specified polyneuropathies, and other reaction to spinal and lumbar puncture. It paid appellant wage-loss compensation on the supplemental rolls, effective March 3, 2023, and on the periodic rolls, effective April 23, 2023.<sup>3</sup>

In a report dated January 4, 2023, Dr. John W. Ellis, a Board-certified family medicine physician, requested expansion of the acceptance of appellant's claim to include migraine, left lower extremity causalgia, neck muscle/fascia/tendon strain, and anxiety disorder. He recounted appellant's history of injury, medical history, and physical examination findings. Dr. Ellis related that while appellant was undergoing medical testing on April 1, 2021, she sustained a lumbar puncture. Appellant immediately informed the medical staff that she was experiencing a severe headache. On April 3, 2021 she returned to the emergency room and was diagnosed with post-lumbar puncture headache. Dr. Ellis requested that the acceptance of appellant's claim be expanded to include ongoing migraine headache syndrome, which occurred as a result of the lumbar puncture. He also requested that acceptance of appellant's claim be expanded to include left lower extremity causalgia, which developed shortly after her sural nerve biopsy. Dr. Ellis further related that shortly after appellant's sural nerve biopsy, she suffered a fall and sustained a whiplash injury to her neck; therefore, the acceptance of her claim should also be expanded to include cervical strain. He concluded that all of appellant's diagnosed conditions were causally related to her accepted January 26, 2021 employment injury.

In a report dated January 30, 2023, Dr. Keley John Booth, a Board-certified anesthesiologist, recounted appellant's medical history, provided examination findings, and diagnosed other specified polyneuropathies, bilateral peroneal nerve neuropathy, bilateral upper extremities ulnar neuropathy, and cervicalgia. He related that appellant's lower extremity symptoms began following an allergic reaction to a COVID-19 vaccine in January 2021. Dr. Booth also related that appellant underwent a lumbar spine puncture in April 2021, following which she developed headaches. Appellant thereafter developed increased symptoms in the distal lower left extremity following a nerve biopsy of the left ankle. She fell, secondary to these symptoms, and injured her neck exacerbating her cervicalgia. On physical examination, Dr. Booth reported positive left cervical facet and paraspinal musculature; limited cervical flexion and extension; positive right trapezius and right rhomboid major tenderness; negative bilateral elbow Tinel's; and normal lumbar flexion and extension. He diagnosed other specified polyneuropathies,

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<sup>3</sup> On March 26, 2024 appellant retired from federal service due to disability.

bilateral peroneal nerve neuropathy, ulnar neuropathy of the bilateral upper extremities, and cervicalgia.

On April 3, 2023 OWCP referred appellant together with a statement of accepted facts (SOAF), the medical record, and a series of questions, to Dr. Kenneth Trinidad, an osteopathic physician Board-certified in internal medicine, for a second opinion evaluation as to whether appellant was suffering consequential conditions of the COVID-19 vaccine.

In a report dated May 3, 2023, Dr. Trinidad, based on a review of the medical records, SOAF, and physical examination, diagnosed adverse reaction to COVID-19 vaccine; small fiber peripheral neuropathy affecting the left arm and lower extremities; complication of spinal headache following a lumbar puncture, resolved; and consequential aggravation of a preexisting neck condition. He opined that appellant had not reached maximum medical improvement and it was difficult to determine whether there would be improvement. Dr. Trinidad also related that she sustained a consequential neck injury when she fell and struck a wall following her left leg nerve biopsy. This injury aggravated appellant's preexisting cervical disc derangement. Dr. Trinidad concluded that appellant suffered from an adverse reaction to COVID-19 vaccine, sustained a consequential neck injury with left arm radiculopathy, and continued to have problems with peripheral small fiber neuropathy.

Dr. Ellis, in a May 18, 2023 report, again requested expansion of appellant's claim to include cervicalgia, bilateral upper extremity ulnar neuropathy, bilateral peroneal nerve neuropathy, other specified polyneuropathies, and lower back and neck muscle/fascia/tendon strain.

By decision dated June 6, 2023, OWCP expanded the acceptance of the claim to include left lower extremity causalgia, and strain of the muscle/fascia tendons of the neck.

In reports dated July 20 and 31, 2023, Dr. Ellis provided examination findings. He related that appellant had tenderness to palpation over the bilateral paraspinal muscles, trapezius muscles, and sternocleidomastoid muscles bilaterally; notable tenderness, tightness and a knot on the medial border of the right scapula; decreased range of motion in all planes; and positive Spurling's test. Examination of appellant's lower extremities revealed decreased sensory on sharp/dull recognition and monofilament testing; weakness with both flexion and extension of the left and right ankle; inability to heel raise on the left foot, and decreased strength and range of motion bilaterally. Examination of her lower back revealed decreased range of motion and decreased strength along all planes; tenderness to palpation along the bilateral paraspinal muscles and sacroiliac joints, with associated tightness; palpable trigger points; decreased sensation on monofilament and 2-point discrimination along the bilateral L4, L5, and S1 nerve roots; positive straight leg raise bilaterally; and positive Bragard's sign bilaterally. Dr. Ellis related that appellant's severe pain symptoms in the neck and lower back caused her to continue to frequent the emergency room for treatment. He concluded that her work-related conditions had not resolved, but rather continued to worsen, and in all probability would continue to worsen. Dr. Ellis diagnosed adverse effect of viral vaccine, generalized muscle weakness, bilateral ankle effusion, other specified polyneuropathies, and other reaction to spinal and lumbar puncture, left lower extremity causalgia, neck and lower back muscle/fascia/tendons strain, cervicalgia, bilateral upper extremity neuropathy, and bilateral peroneal nerve neuropathy. He opined that the COVID-19 vaccine caused or contributed to the diagnosed conditions. Dr. Ellis concluded that appellant

continued to have residuals of the accepted employment conditions and that while she was not totally disabled, she could perform modified-duty work.

On August 24, 2023 OWCP referred appellant together with a SOAF, the medical record, and a series of questions, to Dr. Nicole Washington, an osteopathic physician Board-certified in psychiatry, for a second opinion evaluation as to whether appellant was suffering from additional consequential conditions of the COVID-19 vaccine.

In a report dated September 14, 2023, Dr. Washington, based on a review of the medical records, SOAF, and psychiatric examination, diagnosed adjustment disorder with mixed anxiety and depression. She opined that appellant's diagnosed adjustment disorder was a consequence of the COVID-19 vaccine. In support of this opinion, Dr. Washington explained that appellant developed anxiety and depression after experiencing pain, weakness, and numbness with loss of function from the COVID-19 vaccine in February 2021. She opined that appellant's work-related condition had not resolved and attributed her mental health symptoms to her physical symptoms. Dr. Washington concluded that she found no evidence that appellant's psychiatric symptoms prevented her from returning to her date-of-injury position.

By decision dated September 26, 2023, OWCP further expanded the acceptance of the claim to include unspecified adjustment disorder.

Dr. Booth, in an October 11, 2023 report, diagnosed cervical radiculopathy and cervical facet arthropathy. He attributed the diagnosed conditions to a fall appellant sustained due to leg and upper extremity weakness, which he attributed to the accepted January 26, 2021 employment injury.

On October 19, 2023 Dr. Joseph Bridger Cox, a Board-certified neurosurgeon, reviewed appellant's diagnostic tests. He reported her continuing complaints of pain and continued weakness due to her 2021 injury. Dr. Cox recommended that appellant undergo C5-7 anterior cervical discectomy and fusion surgery.

OWCP received reports covering the period October 25, 2023 through January 8, 2024 from Lee Mackin, a physician assistant, who provided examination findings and diagnosed cervical radiculopathy and cervical facet arthropathy.

In December 6 and 8, 2023 reports, Dr. Ellis again noted appellant's accepted conditions, and her ongoing physical examination findings. He again requested expansion of the acceptance of her claim. Dr. Ellis concluded that appellant could not return to her date-of-injury position, but could perform modified work.

On December 12, 2023 OWCP referred appellant together with an updated SOAF, the medical record, and a series of questions, to Dr. David McCoy, a Board-certified psychiatrist and neurologist, for a second opinion evaluation to determine whether appellant was suffering from any additional conditions, causally related to the COVID-19 vaccine, and whether she required further medical treatment.

In a report dated December 20, 2023, Dr. McCoy recounted appellant's symptoms of ankle swelling, bilateral ankle and hand pain, chronic headaches, and difficulty walking. He noted that, based on the SOAF, appellant had received the COVID-19 vaccination on January 5 and 26, 2021

and that OWCP had accepted adverse effect of other viral vaccines, generalized muscle weakness, bilateral ankle effusion, other specified polyneuropathies, and other reaction to spinal and lumbar puncture, left lower limb causalgia, and adjustment disorder. Dr. McCoy noted that OWCP had requested that he evaluate whether appellant suffered from any additional conditions due to the COVID-19 vaccine, the need for any further treatment, and whether she was capable of returning to her date-of-injury job. Reviewing appellant's medical record, he noted a normal March 15, 2021 electromyograph/nerve conduction velocity (EMG/NCV) study; normal March 17, 2021 bilateral leg vascular ankle-brachial index (ABI); normal March 29, 2021 brain magnetic resonance imaging (MRI) scan; chronic age-related changes on a March 29, 2023 cervical MRI scan but no spinal cord or nerve compression; an unremarkable June 18, 2021 rheumatology evaluation; and normal March 21, 2023 MRI scans of the left humerus, left forearm, and thoracic spine. Dr. McCoy related that on physical examination appellant had no sensory deficits, normal reflexes, no motor ataxias, no dysdiadochokinesia, and normal station/gait. He opined that appellant's diagnosed lower back muscle/fascia/tendons strain, bilateral peroneal nerve neuropathy, bilateral upper extremity nerve neuropathy, and cervicalgia were unrelated to the COVID-19 vaccine in any way and that she was not suffering from any additional conditions related to the COVID-19 vaccine. Dr. McCoy explained that there were no neurological diseases present, and that any reaction appellant had to the COVID-19 vaccine appeared to have completely resolved. He concluded that appellant was capable of returning to her date-of-injury job and had no disability or work restrictions.

On January 12, 2024 Dr. Ellis reviewed Dr. McCoy's report and disagreed with his opinion. He noted that appellant had been evaluated by many specialists including by Dr. Trinidad, an OWCP second opinion physician, who all concluded that appellant had residuals of the accepted employment injury. Dr. Ellis opined that Dr. McCoy did not thoroughly review the medical records based on the opinions expressed by multiple physicians. He also disagreed with Dr. McCoy's opinion that appellant was capable of performing her date-of-injury position.

On January 31, 2024 OWCP requested a supplemental report from Dr. McCoy and provided an updated SOAF for his review. In a February 6, 2024 supplemental report, Dr. McCoy related that appellant had no neurologic disability, based on her full neurologic examination. He noted that the accepted medical conditions of adverse effect of viral vaccine, muscle weakness, bilateral ankle effusion, and other reaction to spinal and lumbar puncture, had all resolved. Dr. McCoy also noted that OWCP had accepted other specified polyneuropathies and left lower limb causalgia. He opined that no further treatment was required for the other specified polyneuropathies based on a normal March 15, 2021 EMG/NCV and sural nerve biopsy showed very subtle microscopic changes. Dr. McCoy also related that no further treatment was required for the left lower limb causalgia as the condition either resolved or was inappropriately diagnosed. In support of this conclusion, appellant's neurological examination showed no evidence of this condition. With respect to the accepted adjustment disorder, Dr. McCoy noted further treatment may be warranted, but that it would be best evaluated by a mental health provider. He concluded that appellant had no neurological disability and was capable of returning to her date-of-injury position.

In reports dated February 5 and March 5, 2024, Zachary Devine, a physician assistant, provided examination findings and reviewed diagnostic tests. He diagnosed adverse effective of viral vaccines, generalized muscle weakness, left ankle swelling, right ankle effusion, complication of lumbar puncture, left lower limb causalgia, and other specified polyneuropathies.

On March 11, 2024 OWCP issued a notice of proposed termination of appellant's wage-loss compensation and medical benefits based on the December 20, 2023 and February 6, 2024 reports from Dr. McCoy. It afforded her 30 days to submit additional evidence or argument challenging the proposed termination.

OWCP subsequently received medical evidence including physical therapy notes, reports from Mr. Devine, and diagnostic tests.

Dr. Cox, in a March 19, 2024 report, recounted appellant's medical history and provided physical examination findings. He reported that she had large C5-6 and C6-7 disc herniations causing severe stenosis. Dr. Cox also noted that Dr. Trinidad had attributed appellant's neck injury and fall to her adverse COVID-19 vaccine reaction.

In a letter dated March 19, 2024, appellant requested referral for an impartial medical examination based on the conflict in the medical opinion evidence between Dr. Ellis and Dr. McCoy.

By decision dated July 23, 2024, OWCP finalized the termination of her wage-loss compensation and medical benefits effective that date. It accorded the weight of the medical evidence to the opinion of the second opinion physician, Dr. McCoy.

### **LEGAL PRECEDENT**

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of benefits.<sup>4</sup> It may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.<sup>5</sup> OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>6</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.<sup>7</sup> To terminate authorization for medical treatment, OWCP must establish that the employee no longer has residuals of an employment-related condition, which require further medical treatment.<sup>8</sup>

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<sup>4</sup> *A.P.*, Docket No. 22-1054 (issued January 6, 2023); *A.D.*, Docket No. 18-0497 (issued July 25, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

<sup>5</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>6</sup> *M.N.*, Docket No. 21-0980 (issued July 24, 2023); *R.R.*, Docket No. 19-0173 (issued May 2, 2019); *T.P.*, 58 ECAB 524 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

<sup>7</sup> *A.V.*, Docket No. 23-0230 (issued July 28, 2023); *L.W.*, Docket No. 18-1372 (issued February 27, 2019); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

<sup>8</sup> *E.H.*, Docket No. 23-0503 (issued July 20, 2023); *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *A.P.*, Docket No. 08-1822 (issued August 5, 2009).

## ANALYSIS

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective July 23, 2024.

Dr. McCoy, OWCP's second opinion physician, in his December 20, 2023 and February 6, 2024 reports, found that any reaction appellant had to the COVID-19 vaccine had resolved and no further medical treatment was required. He related that she had normal physical examination and neurologic findings. Dr. McCoy also opined that appellant's diagnosed lower back muscle/fascia/tendons strain, bilateral peroneal nerve neuropathy, bilateral upper extremity nerve neuropathy, and cervicgia were unrelated to the COVID-19 vaccine in any way and that she was not suffering from any additional conditions related to the COVID-19 vaccine. He concluded that she was capable of returning to her date-of-injury job and had no work restrictions or disability.

OWCP terminated appellant's wage-loss compensation and medical benefits relying on Dr. McCoy's reports as the weight of the medical evidence. The Board finds that Dr. McCoy did not provide an accurate factual and medical background because of the SOAF provided by OWCP. In this regard, he opined that appellant's lower back muscle/fascia/tendons strain, and cervicgia were not employment related. However, on June 6, 2023, OWCP had expanded the acceptance of appellant's claim to include strain of the muscle/fascia tendons of the neck.

It is well established that a physician's opinion must be based on a complete and accurate factual and medical background. When OWCP has accepted an employment condition as occurring in the performance of duty, the physician must base his opinion on these accepted conditions.<sup>9</sup> Further, OWCP's procedures dictate that, when an OWCP medical adviser, second opinion specialist, or referee physician 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>10</sup>

In the present case, OWCP erred in relying on Dr. McCoy's reports, as it did not provide him with an accurate SOAF, which noted all of appellant's accepted conditions.

The Board further finds that Dr. McCoy did not address whether appellant's accepted adjustment disorder had resolved. Dr. McCoy noted that further treatment may be warranted, but that this condition would be best evaluated by a mental health provider. OWCP did not, however, secure an evaluation of appellant's accepted adjustment disorder prior to terminating her wage-loss compensation and medical benefits.

Due to the aforementioned deficiencies in Dr. McCoy's reports, the Board finds that his opinion is of diminished probative value and is insufficient to justify OWCP's termination of appellant's wage-loss compensation and medical benefits. As OWCP has not established that

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<sup>9</sup> See *P.W. (J.W.)*, Docket No. 24-0713 (issued September 20, 2024); *K.S.*, Docket No. 22-1011 (issued January 5, 2023); *D.T.*, Docket No. 21-1168 (issued April 6, 2022); *G.B.*, Docket No. 20-0750 (issued October 27, 2020); *T.P.*, 58 ECAB 524 (2007).

<sup>10</sup> *P.W. (J.W.)*, *id.*; *J.Z.*, Docket No. 22-0829 (issued December 9, 2022); *M.H.*, Docket No. 21-1014 (issued July 8, 2022); *N.W.*, Docket No. 16-1890 (issued June 5, 2017); *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

appellant no longer has disability and/or residuals causally related to the accepted January 26, 2021 employment injury, it has 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 July 23, 2024.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 23, 2024 decision of the Office of Workers' Compensation Programs is reversed.

Issued: November 1, 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