

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

L.L., Appellant)	
)	
and)	Docket No. 24-0887
)	Issued: November 21, 2024
U.S. POSTAL SERVICE, ATLANTIC CITY)	
CARRIER ANNEX POST OFFICE,)	
Atlantic City, NJ, Employer)	
)	

Appearances: *Case Submitted on the Record*
Michael D. Overman, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

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

JURISDICTION

On September 3, 2024 appellant, through counsel, filed a timely appeal from an April 3, 2024 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 April 3, 2024 decision, appellant submitted additional evidence to OWCP. 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 December 6, 2022, as she no longer had disability or residuals causally related to her accepted July 19, 2018 employment injury; and (2) whether appellant has met her burden of proof to establish continuing disability or residuals, on or after December 6, 2022, causally related to her accepted July 19, 2018 employment injury.

FACTUAL HISTORY

On July 20, 2018 appellant, then a 38-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on July 19, 2018 she injured her back, neck, shoulder blades, and spine when a vehicle struck her postal vehicle while she was in the performance of duty. She stopped work on that date. OWCP accepted the claim for cervical, lumbar and thoracic sprains. It paid wage-loss compensation on the supplemental rolls commencing September 3, 2018.

Appellant returned to a modified-duty letter carrier position on July 11, 2019. She filed a notice of recurrence (Form CA-2a) on September 23, 2019 alleging that she sustained a recurrence of disability on August 2, 2019 causally related to the July 19, 2018 employment injury. On November 7, 2019 OWCP accepted that appellant sustained a recurrence of total disability, effective August 2, 2019. It paid wage-loss compensation on the supplemental rolls commencing August 5, 2019, and on the periodic rolls commencing April 26, 2020.

In a series of reports dated August 2, 2019 through December 15, 2020, appellant's attending physician, Dr. Peter Pryzbylowski, a Board-certified anesthesiologist, recounted her history of injury, and diagnosed aggravation and exacerbation of preexistent cervicalgia, cervical radiculopathy, lumbago and lumbar radiculopathy. He found that she was totally disabled from work.

On March 2, 2022 OWCP referred appellant, along with a statement of accepted facts (SOAF), a copy of the case record, and a series of questions, to Dr. Stephen D. Koss, a Board-certified orthopedic surgeon, for a second opinion examination and evaluation regarding the status of her employment-related conditions.

In a report dated May 4, 2022, Dr. Koss reviewed the SOAF and the medical records. He performed a physical examination and found no current diagnoses causally related to the accepted employment injury. Dr. Koss related that there were no objective findings to support cervical or lumbar radiculopathy, and no pain with range of motion. He further noted that appellant's current complaints of numbness and tingling in the hands were due to carpal tunnel syndrome and unrelated to her accepted employment injury. Dr. Koss found no further treatment was medically necessary or appropriate. He determined that she was unable to return to her date-of-injury position due to her nonemployment-related carpal tunnel syndrome and required work restrictions due only to this condition.

On June 22, 2022 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits because her accepted July 19, 2018 employment injury had resolved. It found that the weight of medical evidence rested with the May 4, 2022 medical report of Dr. Koss, OWCP's second opinion physician, who found that she no longer had disability or residuals causally related to her accepted July 19, 2018 employment injury.

Appellant completed a narrative statement on July 21, 2022, wherein she disagreed with the proposed termination. She asserted that Dr. Koss performed only a cursory examination.

In a July 18, 2022 report, Dr. Pryzbylkowski recounted appellant's July 19, 2018 employment incident and repeated his diagnoses. On physical examination, he found that appellant was moderately distressed due to pain, that her cervical and lumbar spine ranges of motion were limited, and that sensation in both upper extremities was altered. Dr. Pryzbylkowski reviewed September 18, 2019 electromyogram (EMG) studies, and found right C5-6 and left C6-6 radiculopathy, and carpal tunnel syndrome. He continued to find that appellant was totally disabled from work.

By decision dated December 6, 2022, OWCP finalized the termination of appellant's wage-loss compensation and medical benefits, effective that date. It found that the weight of the medical evidence rested with Dr. Koss, the second opinion physician, who had determined in his May 4, 2022 report that she no longer had disability or residuals causally related to the accepted employment injury.

On January 7 and March 30, 2023 appellant requested reconsideration and submitted additional evidence. In a January 3, 2023 report, Dr. Pryzbylkowski described the July 19, 2018 employment injury and found that she continued to experience pain in her neck and low back with a continued positive straight leg raising and foraminal compression tests indicative of lumbar and cervical radicular complaints. He diagnosed lumbar and cervical radiculopathy, determined that appellant had reached maximum medical improvement (MMI), and found that her prognosis was poor, most likely requiring surgery. Dr. Pryzbylkowski related that she could not return to her date-of-injury position, but was capable of performing light-duty work.

On February 16, 2023 Dr. Russell Abrams, a neurologist, performed right upper extremity EMG and nerve conduction velocity (NCV) studies which demonstrated cervical radiculopathy. In a February 24, 2023 note, Dr. Abrams performed a right lower extremity EMG/NCV study, and diagnosed cervical radiculopathy, right lumbar radiculopathy at L5, and axonal sensory neuropathy in the bilateral lower extremities.

By decision dated April 27, 2023, OWCP denied modification of the December 6, 2022 decision.

On March 25, 2024 appellant, through counsel, requested reconsideration and submitted additional evidence. In a March 18, 2024 report, Dr. Pryzbylkowski reviewed Dr. Koss' May 4, 2022 report, and disagreed with his diagnoses. He opined that appellant did not simply suffer sprain and strain injuries to her spine, that diagnostic testing demonstrated radiculopathy at right C5-6, carpal tunnel syndrome in the right wrist, and radiculopathy at left C6-7 following the motor vehicle accident on July 19, 2018. Dr. Pryzbylkowski opined that her diagnoses were aggravation and exacerbation of preexisting cervicgia, cervical radiculopathy, lumbago, and lumbar radiculopathy. He related that it was not uncommon for a motor vehicle accident to cause radicular complaints in the arms and legs, and this is what happened to appellant since July 19, 2018. Dr. Pryzbylkowski further related that appellant was not capable of returning to her date-of-injury position.

By decision dated April 3, 2024, OWCP denied modification of the December 6, 2022 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 compensation benefits.⁴ It may not terminate compensation without establishing either that the disability has ceased, or that it is no longer related to the employment.⁵ OWCP's 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 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.⁸

ANALYSIS -- ISSUE 1

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective December 6, 2022, as she no longer had disability or residuals causally related to her accepted July 19, 2018 employment injury.

In a May 4, 2022 report, Dr. Koss, OWCP's second opinion physician, reviewed appellant's history of injury, provided physical examination findings, and opined that her current condition was not related to the accepted employment injury. He related that there were no objective findings to support cervical or lumbar radiculopathy, and no pain with range of motion. Dr. Koss concluded that appellant's work-related condition had resolved, and that no further treatment was medically warranted.

The Board finds that the weight of the medical evidence with respect to OWCP's termination action is represented by the well-rationalized opinion of Dr. Koss. The May 4, 2023 report of Dr. Koss establishes that appellant no longer had employment-related disability or residuals causally related to the accepted July 19, 2018 employment injury. The Board has reviewed Dr. Koss' opinion and finds that it has reliability, probative value, and convincing quality with respect to its conclusions regarding the relevant issue of work-related disability and residuals. Accordingly, OWCP properly relied on his opinion in terminating appellant's wage-loss compensation and medical benefits.⁹

⁴ *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).

⁵ *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).

⁶ *R.R.*, Docket No. 19-0173 (issued May 2, 2019); *T.P.*, 58 ECAB 524 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

⁷ *L.W.*, Docket No. 18-1372 (issued February 27, 2019); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁸ *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *A.P.*, Docket No. 08-1822 (issued August 5, 2009).

⁹ *P.G.*, Docket No. 24-0437 (issued June 26, 2024); *S.V.*, Docket No. 23-0474 (issued August 1, 2023).

The remaining evidence submitted prior to OWCP's termination of appellant's compensation is insufficient to overcome the weight accorded to Dr. Koss as the second opinion physician.

Appellant submitted a July 18, 2022 report from Dr. Pryzbylkowski documenting findings related that appellant was moderately distressed due to pain, that her cervical and lumbar spine ranges of motion were limited, and that sensation in both upper extremities was altered. Dr. Pryzbylkowski reviewed September 18, 2019 EMG studies and found right C5-6 and left C6-6 radiculopathy and carpal tunnel syndrome, and continued to find that appellant was totally disabled. His report, however, is of limited probative value as he fails to provide medical rationale explaining how appellant had continuing disability or residuals causally related to the accepted employment injury.¹⁰ Accordingly, Dr. Pryzbylkowski's report is insufficient to overcome the weight of the medical evidence accorded to Dr. Koss, or to create a conflict in medical opinion as to whether her accepted conditions had resolved.¹¹

The Board, therefore, finds that OWCP properly terminated appellant's wage-loss compensation and medical benefits, effective December 6, 2022.

LEGAL PRECEDENT -- ISSUE 2

Once OWCP properly terminates compensation benefits, the burden shifts to appellant to establish continuing disability and residuals on or after that date causally related to the accepted injury.¹² To establish causal relationship between the accepted conditions as well as any continuing disability or residuals claimed and the accepted employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background supporting such causal relationship.¹³

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met her burden of proof to establish continuing disability or residuals, on or after December 6, 2022, causally related to her accepted July 19, 2018 employment injury.

Following the termination of her wage-loss compensation and medical benefits, appellant submitted January 3, 2023 and March 18, 2024 reports, wherein Dr. Pryzbylkowski explained that diagnostic testing demonstrated radiculopathy at right C5-6, carpal tunnel syndrome in the right wrist, and radiculopathy at left C6-7 following the motor vehicle accident on July 19, 2018. Dr. Pryzbylkowski opined that her diagnoses were aggravation and exacerbation of preexisting cervicalgia, cervical radiculopathy, lumbago, and lumbar radiculopathy. He related that it was not uncommon for a motor vehicle accident to cause radicular complaint in the arms and legs, and that this is what occurred to appellant since July 19, 2018. Dr. Pryzbylkowski further related that she

¹⁰ See *E.H.*, Docket No. 23-0503 (issued July 20, 2023); *L.S.*, Docket No. 19-0959 (issued September 24, 2019); *J.F.*, Docket No. 17-1716 (issued March 1, 2018).

¹¹ See *E.H.*, *id.*; *D.L.*, Docket No. 22-0161 (issued March 10, 2023).

¹² See *J.N.*, Docket No. 20-1030 (issued November 20, 2020); *L.C.*, Docket No. 18-1759 (issued June 26, 2019).

¹³ *Id.*

was not capable of returning to her date-of-injury position. His reports, however, are of limited probative value as he did not explain with medical rationale how appellant had continuing disability or residuals causally related to the accepted July 19, 2018 employment injury.¹⁴

Appellant also provided February 16 and 24, 2023 reports from Dr. Abrams. These reports, however, fail to provide an opinion on causal relationship and therefore, are of no probative value regarding the issue on appeal.¹⁵

As the medical evidence of record is insufficient to establish continuing disability or residuals, on or after December 6, 2022, causally related to her accepted July 19, 2018 employment injury, the Board finds that appellant has not met her burden of proof.¹⁶

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective December 6, 2022, as she no longer had disability or residuals causally related to her accepted July 19, 2018 employment injury. The Board further finds that she has not met her burden of proof to establish continuing disability or residuals, on or after December 6, 2022, causally related to her accepted July 19, 2018 employment injury.

¹⁴ See *E.H.*, Docket No. 23-0503 (issued July 20, 2023); *L.S.*, Docket No. 19-0959 (issued September 24, 2019); *J.F.*, Docket No. 17-1716 (issued March 1, 2018).

¹⁵ See *C.F.*, Docket No. 23-0012 (issued April 26, 2024); *F.S.*, Docket No. 23-0112 (issued April 26, 2023); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁶ See *R.G.*, Docket No. 22-0165 (issued August 11, 2022).

ORDER

IT IS HEREBY ORDERED THAT the April 3, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 21, 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