

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

D.T., Appellant)	
)	
and)	Docket No. 22-0206
)	Issued: October 11, 2024
U.S. POSTAL SERVICE, POST OFFICE,)	
Teterboro, NJ, Employer)	
)	

Appearances:
Paul Kalker, Esq., for the appellant¹
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 November 17, 2021 appellant, through counsel, filed a timely appeal from August 23 and 25, 2021 merit decisions of the Office of Workers' Compensation Programs (OWCP).² Pursuant to the Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.⁴

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 an 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 As counsel has not appealed OWCP's April 6, 2021 decision, the overpayment issue will not be addressed on appeal. *See* 20 C.F.R. § 501.3.

³ 5 U.S.C. § 8101 *et seq.*

⁴ The Board notes that, following the August 25, 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 appellant has established that the acceptance of her claim should be expanded to include additional conditions of adjustment disorder with anxiety, major depressive disorder, post-traumatic stress disorder (PTSD), and agoraphobia without panic disorder as causally related to, or consequential to, her accepted February 6, 2016 employment injury; (2) whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective February 25, 2021 as she no longer had disability or residuals causally related to the accepted February 6, 2016 employment injury; and (3) whether appellant has met her burden of proof to establish continuing employment-related residuals and/or disability on or after February 25, 2021 causally related to the accepted February 6, 2016 employment injury.

FACTUAL HISTORY

This case has previously been before the Board on a different issue.⁵ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On February 6, 2016 appellant, then a 47-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging, that, on that date, a restraint bar came off its track, struck her in the stomach, pushed her into the corner of an all-purpose postal container, and caused her to fall to the floor while in the performance of duty. She stopped work on February 6, 2016. OWCP accepted the claim for contusion of abdominal wall, cervical disc herniation, thoracic disc herniation, and lumbar disc herniation. It paid appellant wage-loss compensation on the supplemental rolls as of March 23, 2016 and on the periodic rolls as of December 11, 2016.

On November 17, 2019 appellant, through her then-counsel, requested that the acceptance of her claim be expanded to include the conditions of major depressive disorder, single episode, PTSD, and agoraphobia without panic disorder.

In reports dated November 6, 2017 and January 19, May 14, June 18, and October 18, 2018, Jonathan Levinson, Psy.D., a licensed clinical psychologist, noted the history of appellant's February 6, 2016 employment injury and her continuing symptoms. He diagnosed PTSD, major depressive disorder, and agoraphobia without panic disorder, causally related to the accepted employment injury. Dr. Levinson concluded that appellant was totally disabled from work. In his June 18, 2018 report, he provided a timeline relative to the development of her psychological condition and the impact it had on her ability to accept or reject a job offer. Dr. Levinson continued to opine that appellant remained totally disabled from work due to her emotional conditions.

Progress reports from Dr. Joel H. King, a Board-certified psychiatrist, dated December 8, 2017 through October 16, 2019 were also received. He noted that appellant was in constant chronic pain from her orthopedic conditions arising from the February 6, 2016 employment incident. Dr. King opined that she was totally disabled from work due to her emotional conditions causally related to the employment injury.

⁵ Docket No. 19-0579 (issued October 22, 2019).

In a December 23, 2019 development letter, OWCP noted that evidence received was insufficient to establish causal relationship between the claimed conditions adjustment disorder with anxiety, major depressive disorder, PTSD, and agoraphobia without panic disorder and the accepted February 6, 2016 employment injury. It advised appellant of the type of additional medical evidence necessary to establish expansion and accorded appellant 30 days to respond.

OWCP subsequently received a January 8, 2020 statement from appellant.

OWCP also received evidence pertaining to appellant's orthopedic conditions. This included a January 6, 2020 report from Dr. Andrew J. Cordiale, an osteopathic physician specializing in orthopedic surgery, and a January 9, 2020 progress report from Dr. Kathy Aligene, a Board-certified physiatrist. These reports noted appellant's diagnoses as cervical sprain, herniated cervical intervertebral disc, cervical radiculopathy, herniated thoracic nucleus pulposus, lumbar spine strain, herniated lumbar intervertebral disc, lumbar radiculopathy, lumbosacral facet joint syndrome, and lumbar stenosis.

By decision dated January 23, 2020, OWCP denied expansion of the acceptance of the claim to include additional diagnoses of adjustment disorder with anxiety, major depressive disorder, PTSD, and agoraphobia without panic disorder as the evidence of record failed to demonstrate that these conditions were related to the February 6, 2016 employment injury.

On February 5, 2020 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. Appellant's then-counsel subsequently requested that the hearing request be changed to a request for a review of the written record.

In a February 12, 2020 progress report, Dr. King continued to opine that appellant's emotional conditions were causally related to the work-related injuries.

In a March 2, 2020 report, Dr. Levinson noted that appellant reported having no cognitive problems or psychological problems prior to the work-related injury. Thus, he opined that her emotional conditions are causally related to the work-related injury. Dr. Levinson also opined that appellant was disabled from work.

By decision dated July 21, 2020, an OWCP hearing representative affirmed OWCP's January 23, 2020 decision.

On August 29, 2020 appellant, through counsel, requested reconsideration.

In an August 24, 2020 report, Dr. Levinson provided examination findings and diagnosed adjustment disorder with anxiety, major depressive disorder, PTSD, and agoraphobia without panic disorder, which he opined are causally related to the work injury. He indicated that both the PTSD and major depression diagnoses resulted from appellant's reaction to the dangerous event she experienced on February 6, 2016. Dr. Levinson explained that when she was hit by a 50-pound steel pole in the spine and stomach in a work area where she had previously felt was safe, this created a traumatic physical and psychological effect, which she relived through recurrent nightmares. For the agoraphobia without panic disorder, he indicated that the physical incident of February 6, 2016 resulted in a fear of returning to the workplace due to fear of a recurrence of this incident. Dr. Levinson also noted that appellant feared that she would be unable to perform the job she had performed for the last 30 years.

By decision dated September 29, 2020, OWCP denied modification of its prior decision.

On October 6, 2020 OWCP referred appellant, along with an October 6, 2020 statement of accepted facts (SOAF) and the medical record, to a second opinion physician to determine whether she had any residuals of or ongoing disability from work from the February 6, 2016 injuries. In the accompanying SOAF, it described the February 6, 2016 employment injury and noted that it had accepted her claim for the conditions of contusion of abdominal wall, cervical disc herniation, thoracic disc herniation, and lumbar disc herniation as arising out of the February 6, 2016 employment injury.

In a December 16, 2020 report, Dr. Leon Sultan, a Board-certified orthopedic surgeon and second opinion physician, noted his review of the medical records and the SOAF. He reported that appellant had not had any active treatment since February or March 2020 because of the COVID-19 pandemic. Dr. Sultan reported an unremarkable physical examination of her neck and lower back with no evidence of any orthopedic or neurological impairment. He noted that while the spinal magnetic resonance imaging (MRI) scan and electrical testing of appellant's neck and back had reported positive findings, those positive findings as well as her subjective complaints did not correlate with the comprehensive orthopedic examination which was unremarkable. Based on the unremarkable spinal examination findings, Dr. Sultan opined that her work-related injuries sustained on February 6, 2016 had clinically resolved with no need for further treatment. He also opined that appellant could return to her date-of-injury mail handler position. Dr. Sultan noted that, while she presented with significant emotional upset, he could not comment on her psychological status as it was outside his field of expertise.

In a January 19, 2021 notice, OWCP advised appellant that it proposed to terminate her wage-loss compensation and medical benefits because she ceased to have residuals/disability causally related to her accepted February 6, 2016 employment injury. It advised her that the proposed action was based on Dr. Sultan's December 16, 2016 report and afforded her 30 days to submit additional evidence or argument challenging the proposed termination of her benefits. No additional evidence was received.

By decision dated February 24, 2021, OWCP terminated appellant's wage-loss compensation and medical benefits, effective February 25, 2021. It found that the weight of the medical evidence was represented by the opinion of Dr. Sultan.

OWCP subsequently received copies of appellant's January 15, 2021 diagnostic testing. A January 15, 2021 lumbar MRI scan, which noted several bulging discs with foraminal stenosis, facet joint hypertrophy, and some impingement on exiting nerve roots, and a January 15, 2021 cervical lumbar MRI scan, which noted several disc herniation and near cord impingement.

In a January 8, 2021 report, Dr. Cordiale provided appellant's history of injury and noted that her pain/symptoms interfered with her daily normal function. He reported that she had undergone physical therapy, nonsteroidal anti-inflammatory drug treatments, acupuncture, and exercise. Physical examination findings of the cervical and lumbar spine showed tenderness and spasms with restricted range of motion. Both cervical and lumbar neurological motor examinations were noted as not being within normal limits. Dr. Cordiale diagnosed herniated cervical intervertebral disc, cervical radiculopathy, herniated lumbar intervertebral disc, and left lumbar radiculopathy. Treatment options discussed with appellant were noted to be considering

surgery. Dr. Cordiale restricted her from any activity that exacerbated symptoms such as heavy lifting, carrying, or bending.

Psychotherapy progress notes from Dr. Levinson dated February 15 and March 31, 2021 were received. He continued to diagnose PTSD, major depressive disorder and agoraphobia without panic disorder. In the February 15, 2021 report, Dr. Levinson indicated that appellant had no psychological history and was fully functioning and very active prior to the February 6, 2016 employment injury. He described her psychological symptoms post the February 6, 2016 employment injury, which he opined that are causally related to the February 6, 2016 employment injury. Dr. Levinson further opined that appellant was psychologically disabled on February 6, 2016 and had reached maximum medical improvement in mid-2019. He further opined that she was unable to return to her prior work without restrictions.

On May 24, 2021 appellant, through counsel, requested reconsideration of OWCP's September 29, 2020 and February 24, 2021 decisions. Additional medical evidence was received.

In an April 2, 2021 report, Dr. David Goldhaber, a podiatrist, indicated that appellant had been a patient since August 2, 2011. He described the February 6, 2016 employment injury and the changes in her gait and personality. Based on his review of the January 13, 2021 MRI scans of the cervical and lumbar areas of the spine, Dr. Goldhaber indicated that appellant's entire spinal column was in a degenerative destructive state and she had tremendous difficulty standing or moving without constant severe pain. He advised that he had been treating spinal conditions leading to foot pathology in his practice for 40 years and have seen how a severe spinal disorder of bulging discs with annular tears and stenosis can cause rehabilitation to a patient and lead to extreme depression and anxiety on a daily basis. Dr. Goldhaber opined that appellant's disability, pain and gait instability was a direct result of the February 6, 2016 work injury. He explained that the permanent spinal column damage and pathology altered her normal gait and activities which led to her constant depression and anxiety.

In a January 25, 2021 report, Dr. Levinson opined that appellant's emotional conditions were due to the physical effects of her injuries as well as the number and magnitude of major life stressors, which he described. He contended that her emotional conditions were not caused by either a fear of future injury or a fear of a recurrence of disability.

Additional progress reports dated May 6 and June 10, 2021 from Dr. Levinson were received.

By decision dated August 23, 2021, OWCP denied modification of its September 29, 2020 expansion decision.

By decision dated August 25, 2021, OWCP denied modification of its February 24, 2021 termination decision.

LEGAL PRECEDENT -- ISSUE 1

The general rule respecting consequential injuries is that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent

intervening cause, which is attributable to the employee's own intentional conduct.⁶ The subsequent injury is compensable if it is the direct and natural result of a compensable primary injury. With respect to consequential injuries, the Board has held that, where an injury is sustained as a consequence of an impairment residual to an employment injury, the new or second injury, even though nonemployment related, is deemed, because of the chain of causation, to arise out of and in the course of employment and is compensable.⁷

When an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.⁸

To establish causal relationship between a condition and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.⁹ The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹⁰

ANALYSIS -- ISSUE 1

The Board finds that the case is not in posture for decision regarding whether appellant has established that the acceptance of her claim should be expanded to include additional conditions of adjustment disorder with anxiety, major depressive disorder, PTSD, and agoraphobia without panic disorder as causally related to, or consequential to, her accepted February 6, 2016 employment injury.

In his August 24, 2020 report, Dr. Levinson diagnosed adjustment disorder with anxiety, major depressive disorder, PTSD, and agoraphobia without panic disorder, which he opined that are causally related to the work injury. He explained that both the PTSD and major depression diagnoses resulted from appellant's reaction to the dangerous event she experienced on February 6, 2016. Dr. Levinson further explained that when appellant was hit by a 50-pound steel pole in the spine and stomach in a work area where she had previously felt was safe, this created a traumatic physical and psychological effect, which she relived through recurrent nightmares. For the agoraphobia without panic disorder, Dr. Levinson concluded that the physical incident of February 6, 2016 resulted in a fear of returning to the workplace. This report, while insufficiently

⁶ See *K.D.*, Docket Nos. 17-1894 and 18-1237 (issued August 6, 2018); *Mary Poller*, 55 ECAB 483 (2004).

⁷ See *K.D.*, *id.*; *S.S.*, 59 ECAB 315 (2008); *Debra L. Dillworth*, 57 ECAB 516 (2006).

⁸ See *D.E.*, Docket No. 20-0936 (issued June 24, 2021); *S.L.*, Docket No. 19-0603 (issued January 28, 2020); *T.E.*, Docket No. 18-1595 (issued March 13, 2019); *T.F.*, Docket No. 17-0645 (issued August 15, 2018); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁹ See *D.E.*, *id.*; *S.A.*, Docket No. 18-0399 (issued October 16, 2018).

¹⁰ See *E.B.*, Docket No. 18-1060 (issued November 1, 2018); *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962).

rationalized to meet her burden of proof to establish a consequential emotional condition, is sufficient to require further development.¹¹

On remand OWCP shall prepare a SOAF and refer appellant to a second opinion physician in the appropriate field of medicine for an examination and a rationalized medical opinion on the issue of expansion.¹² If the second opinion disagrees with the opinion of Dr. Levinson, he or she must explain with rationale how or why his or her opinion differs. After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

LEGAL PRECEDENT -- ISSUE 2

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify modification or termination of an employee's benefits.¹³ It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment injury.¹⁴ OWCP's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.¹⁵

The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.¹⁶ To terminate authorization for medical treatment, OWCP must establish that the employee no longer has residuals of an employment-related condition that require further medical treatment.¹⁷

ANALYSIS -- ISSUE 2

The Board finds that OWCP has failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective February 25, 2021.

As explained above, OWCP undertook development of the medical record to determine whether the acceptance of appellant's claim should be expanded to include additional emotional conditions, but has not resolved the issue. As the issue of expansion is not in posture for decision,

¹¹ See *K.D.*, *supra* note 6; *M.M.*, Docket No. 13-1017 (issued September 13, 2013). See *J.M.*, Docket No. 20-1230 (issued February 16, 2021).

¹² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *C.C.*, Docket No. 19-1631 (issued February 12, 2020).

¹³ *M.S.*, Docket No., 21-1251 (issued March 8, 2022); *S.P.*, Docket No. 19-0196 (issued June 24, 2020); *D.G.*, Docket No. 19-1259 (issued January 29, 2020); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

¹⁴ *A.T.*, Docket No. 20-0334 (issued October 8, 2020); *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

¹⁵ *C.R.*, Docket No. 19-1132 (issued October 1, 2020); *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

¹⁶ *E.J.*, Docket No. 20-0013 (issued November 19, 2020); *L.W.*, Docket No. 18-1372 (issued February 27, 2019).

¹⁷ *A.J.*, Docket No. 18-1230 (issued June 8, 2020); *L.S.*, Docket No. 19-0959 (issued September 24, 2019); *R.P.*, Docket No. 18-0900 (issued February 5, 2019).

the Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits.¹⁸

CONCLUSION

The Board finds that this case is not in posture for decision regarding whether appellant has established that the acceptance of her claim should be expanded to include additional conditions of adjustment disorder with anxiety, major depressive disorder, PTSD, and agoraphobia without panic disorder as causally related to, or consequential to, her accepted February 6, 2016 employment injury. The Board further finds that OWCP improperly terminated appellant's entitlement to wage-loss compensation and medical benefits, effective February 25, 2021.

ORDER

IT IS HEREBY ORDERED THAT the August 23, 2021 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board. The August 25, 2021 decision of the Office of Workers' Compensation Programs is reversed.

Issued: October 11, 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

¹⁸ See *C.M.*, Docket No. 22-0183 (issued January 9, 2024); *M.B.*, Docket No. 22-1180 (issued August 17, 2023). In light of the Board's disposition regarding Issue 2, Issue 3 is rendered moot.