

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

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C.M., Appellant )

and )

U.S. POSTAL SERVICE, FOREST HILL POST )  
OFFICE, Richmond, VA, Employer )

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**Docket No. 24-0581  
Issued: October 8, 2024**

*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  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On May 8, 2024 appellant filed a timely appeal from a January 18, 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.

**ISSUE**

The issue is whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective January 8, 2024, as she no longer had disability or residuals causally related to her accepted August 4, 2008 employment injury.

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

## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>2</sup> 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 August 4, 2008 appellant, then a 39-year-old letter carrier, filed a traumatic injury claim (Form CA-1), alleging that on that date she injured her back when she backed her postal vehicle into a parked car as she fought off a bee that had entered her vehicle while in the performance of duty. On the reverse side of the claim form, the employing establishment indicated that she stopped work on the date of injury. By decision dated August 14, 2008, OWCP accepted appellant's claim for lumbar sprain. It initially paid her intermittent wage-loss compensation on the supplemental rolls as of September 11, 2010, and then on the periodic rolls, effective August 24, 2014.

In a work capacity evaluation (Form OWCP-5c) dated August 3, 2017, appellant's treating physician Dr. Charles Vokac, a physical medicine and rehabilitation specialist, indicated that appellant was not able to perform her usual job without restrictions due to lumbar disc herniation. He noted that she was able to work for eight hours per workday with restrictions at the sedentary and light strength levels. Dr. Vokac noted physical limitations which included: pushing up to 2 pounds for one third of the day; pulling up to 2 pounds for one third of the day; lifting up to 25 pounds for one third of the day; and squatting, kneeling and climbing up to 28 steps for one third of the day each. He also noted that appellant could walk 10 minutes continuously, and intermittently up to 20 to 30 minutes. Dr. Vokac indicated that she would require 15-minute breaks every hour.

On August 8, 2017 the employing establishment offered appellant a modified city carrier position. On August 19, 2017 appellant refused the August 8, 2017 modified job offer as a city carrier, alleging it exceeded her restrictions.

In a letter dated December 12, 2018, OWCP advised appellant that it did not find her refusal of the modified job offer to be valid. It provided her an additional 15 days to accept the position and advised that if she did not accept the position, her wage-loss and schedule award compensation would be terminated. No response was received.

By decision dated January 16, 2019, OWCP terminated appellant's wage-loss compensation and entitlement to schedule award benefits, effective January 16, 2019, because she refused an offer of suitable work, pursuant to 5 U.S.C. § 8106(c)(2).

In a report dated January 22, 2019, Dr. Vokac reiterated that appellant's work restrictions, as outlined by his report of August 3, 2017, were restrictive enough that she was essentially unemployable.

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<sup>2</sup> Docket No. 19-1160 (issued January 10, 2020).

On January 22, 2019 appellant requested reconsideration of OWCP's January 16, 2019 decision. By decision dated April 22, 2019, OWCP denied modification of its January 16, 2019 decision.

Appellant appealed to the Board on April 29, 2019. By decision dated January 10, 2020, the Board reversed the January 16 and April 22, 2019 decisions of OWCP, finding that OWCP improperly terminated appellant's wage-loss compensation and entitlement to schedule award benefits effective January 16, 2019 due to her refusal of an offer of suitable work, as OWCP had not established that the modified city carrier position was suitable.

On September 4, 2020 OWCP referred appellant, along with a statement of accepted facts (SOAF), the case record, and a series of questions, to Dr. James Schwartz, a Board-certified orthopedic surgeon, for a second opinion evaluation regarding the status of her employment-related conditions.

In an October 23, 2020 report, Dr. Schwartz reviewed the SOAF, appellant's history of injury, and the medical record. On physical examination, he observed a somewhat halting but reciprocal gait along with difficulty standing from a chair, difficulty standing on heels, and flexion with fingertips to mid thigh with pain at the thoracolumbar junction. Appellant's spinal range of motion was 5 to 10 degrees of extension, less than 15 degrees of right and left lateral bending, and less than 15 degrees of rotation bilaterally. Dr. Schwartz observed pain on shoulder compression and vertex rotation, as well as pain on skin percussion of the mid- and upper lumbar spine. He noted prone midline tenderness at the thoracolumbar junction of the upper lumbar spine. Dr. Schwartz diagnosed an accepted condition of lumbar sprain; preexisting chronic episodic low back pain, unrelated to the accepted injury of August 4, 2008; and non-physiologic pain behavior.

Dr. Schwartz stated that given appellant's preexisting low back pain and treatment, as well as the rather low kinetic energy involved in the August 4, 2008 incident, it was unlikely that any structural damage had been done to appellant's lumbar spine. He noted that subsequent magnetic resonance imaging (MRI) scans did not indicate any significant pathology other than possible age-related degenerative processes, and that the physical examination demonstrated multiple non-physiologic findings. Dr. Schwartz stated that appellant's subjective complaints did not correspond with objective findings. He recommended that while appellant could not return to her date-of-injury position, she was capable of sedentary work. Dr. Schwartz opined that appellant's condition was an aggravation of preexisting lumbar degenerative disc disease and facet joint disease, noting that while clinically this condition represented a permanent aggravation, that clinical aggravation was only on a subjective basis, and that objective findings demonstrated that appellant's work-related condition had resolved. As to prognosis, he stated that it was poor, and that there was no need for any further treatment given that the non-physiologic pain behavior was not treatable.

On July 6, 2022 OWCP referred appellant, along with a SOAF, a copy of the case record, and a series of questions, to Dr. Daniel Schlatterer, an osteopath and Board-certified orthopedic surgeon, for a second opinion evaluation regarding the status of her employment-related conditions. In an August 8, 2022 report, Dr. Schlatterer noted his review of the SOAF, appellant's history of injury, and the medical record. On physical examination of appellant's gait and back, he observed an abnormal gait, a compensated spine, tenderness to deep and superficial back

palpation over the sacroiliac joints and over the sciatic notches, and abnormal flexion. On physical examination of the lower extremities, Dr. Schlatterer observed full strength, and noted that heel-to-toe walking was not intact. A supine straight right leg raise test demonstrated low back tenderness without radiation. Dr. Schlatterer noted that appellant's subjective complaints did not correspond to objective findings. He diagnosed persistent low back pain of unknown etiology. Dr. Schlatterer opined that he could not state to within a degree of medical certainty that appellant's work-related conditions had resolved, as her MRI scan findings were benign, and her physical examination was non-diagnostic. He requested a current functional capacity evaluation (FCE) before issuing an assessment to within a degree of medical certainty.

An FCE obtained on September 28, 2022 from a physical therapist indicated that appellant was capable of sedentary to light work.

On November 18, 2022 OWCP requested a supplemental report from Dr. Schlatterer and enclosed the September 28, 2022 FCE. No supplemental report was received.

In a SOAF dated September 13, 2023, OWCP described the mechanism of injury as: "[b]ee entered postal vehicle while backing up. [Appellant] panicked while fighting bee and developed back spasms on the right side of her back." It also indicated that the claim was accepted for lumbar back sprain.

On October 4, 2023 OWCP referred appellant, along with a SOAF, a the medical record, and a series of questions, to Dr. Alexander Doman, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine the status of her employment-related conditions. It specifically requested that Dr. Doman perform a FCE or contact QTC Medical Services to arrange for one to assist in providing medical rationale for the opinion expressed. In a November 2, 2023 report, Dr. Doman reviewed the SOAF, appellant's history of injury, and the medical record. On physical examination, he observed negative straight leg raising tests from the supine and sitting positions, no signs of muscular atrophy in the lower extremities, and normal ankle and knee reflexes. Dr. Doman noted malingering, explaining that appellant exhibited complaints of severe back pain with simple attempts to flex her knees while in the prone position, bizarre complaints of back pain with minor pressure over subcutaneous tissue, and complaints of back pain with minimal pelvis rotation. He stated that these findings were non-physiologic in nature.

Dr. Doman opined that appellant's subjective complaints were not related to her accepted August 4, 2008 work-related injury and stated that she was malingering. He diagnosed age-related progressive degenerative arthritis of the lumbar spine. Dr. Doman further opined that appellant's accepted lumbar sprain had resolved long ago, and is not related to the injury described in the SOAF. He also related that her preexisting facet joint arthritis was unrelated to the August 4, 2008 traumatic injury. Dr. Doman noted that appellant reached maximum medical improvement (MMI) as of August 4, 2008, and stated that the mechanism of injury was highly suspicious, and there was no objective evidence of an injury to appellant. He opined that appellant was able to perform full-time regular-duty work without restrictions. Dr. Doman did not indicate that a FCE had been performed or requested.

On December 7, 2023 OWCP sent appellant a notice proposing to terminate her wage-loss compensation and medical benefits, finding that her August 8, 2008 employment injury had

resolved. It accorded the weight of medical evidence to the November 2, 2023 report of Dr. Doman, who stated that she no longer had any disability or residuals causally related to her accepted August 4, 2008 employment injury.

In a statement dated December 11, 2023, appellant disputed the accuracy of Dr. Doman's November 2, 2023 report, referring to the January 22, 2019 report of Dr. Vokac and the September 22, 2022 FCE. She requested that OWCP rescind its proposal to terminate her wage-loss compensation and medical benefits.

By decision dated January 8, 2024, OWCP finalized the proposed termination of appellant's wage-loss compensation and medical benefits, effective that same date. It accorded the weight of the medical evidence to Dr. Doman, who determined in his November 2, 2023 report that she did not have any disability or residuals due to the work-related injury of August 4, 2008.

On January 12, 2024 appellant requested reconsideration. No additional evidence was received.

By decision dated January 18, 2024, OWCP denied modification.

### **LEGAL PRECEDENT**

According to FECA,<sup>3</sup> once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of an employee's benefits.<sup>4</sup> OWCP may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.<sup>5</sup> Its 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 appellant no longer has residuals of an employment-related condition, which require further medical treatment.<sup>8</sup>

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> *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 I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

<sup>6</sup> *R.R.*, Docket No. 19-0173 (issued May 2, 2019); *Del K. Rykert*, 40 ECAB 284 (1988).

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

<sup>8</sup> *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 January 8, 2024.

OWCP prepared a SOAF on September 13, 2023 wherein it noted the mechanism of injury and the accepted condition. This SOAF was referred to Dr. Doman. In a report dated November 2, 2023, in addressing whether the accepted lumbar strain had resolved, Dr. Doman opined that appellant reached MMI as of August 4, 2008, the date of the accepted traumatic injury, and stated that the mechanism of injury was highly suspicious, and there was no objective evidence of an injury to appellant. As such, he reached a conclusion that was contrary to the findings of the SOAF.

It is OWCP's responsibility to provide a complete and proper frame of reference for a physician by preparing a SOAF. OWCP's procedures 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.<sup>9</sup> As Dr. Doman did not use the SOAF as the framework in forming his opinion, his opinion is of diminished probative value.<sup>10</sup>

The Board also notes that OWCP specifically requested that Dr. Doman perform an FCE or contact QTC to arrange for one to assist in providing medical rationale for the opinion expressed. However, Dr. Doman did not perform or request an FCE.

As the November 2, 2023 report of Dr. Doman is, therefore, insufficiently rationalized to justify the termination of appellant's wage-loss compensation and medical benefits, the Board finds that OWCP 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 January 8, 2024.

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<sup>9</sup> See *V.L.*, Docket No. 24-0739 (issued August 26, 2024); *S.T.*, Docket No. 18-1144 (issued August 9, 2019).

<sup>10</sup> *Id.*; see also *S.T.*, Docket No. 18-1144 (issued August 9, 2019); *Y.D.*, Docket No. 17-0461 (issued July 11, 2017).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 18, 2024 decision of the Office of Workers' Compensation Programs is reversed.

Issued: October 8, 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