

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

C.B., Appellant)

and)

U.S. POSTAL SERVICE, BOGGS ROAD POST)
OFFICE, Duluth, GA, Employer)

Docket No. 24-0597

Issued: October 8, 2024

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On May 10, 2024 appellant filed a timely appeal from March 6 and April 12, 2024 merit decisions of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish a recurrence of total disability from work commencing May 20, 2023, due to her accepted employment injuries; and (2) whether OWCP has met its burden of proof to terminate appellant's wage-loss

¹ The Board notes that, following the April 12, 2024 decision, OWCP received additional evidence. 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.*

² 5 U.S.C. § 8101 *et seq.*

compensation and medical benefits, effective April 12, 2024, as she no longer had disability or residuals causally related to her accepted March 24, 2020 employment injury.

FACTUAL HISTORY

On April 13, 2020 appellant, then a 51-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1)³ and alleged that on March 24, 2020 she experienced severe bilateral wrist pain lifting a metal door on a cart while in the performance of duty. She stopped work on March 25, 2020. OWCP assigned OWCP File No. xxxxxx431 and accepted the claim for bilateral wrist sprains. It paid compensation on the periodic rolls effective May 9, 2020.

Appellant had previously filed a Form CA-1 on November 4, 2017 alleging that she sustained bilateral wrist strains lifting a tray while in the performance of duty. OWCP assigned this claim OWCP File No. xxxxxx383 and accepted it for bilateral wrist sprains on February 20, 2018. It subsequently expanded acceptance of the claim to include bilateral lateral epicondylitis of the elbows and bilateral radial styloid tenosynovitis. On August 23, 2018 appellant underwent right epicondylar surgical release. She returned to full-time modified-duty work on October 30, 2018 and stopped work on March 26, 2020 following her additional employment injury on March 24, 2020. On September 11, 2020 OWCP administratively combined OWCP File No. xxxxxx383 and the current claim, OWCP File No. xxxxxx431, with the latter designated as the master file.

In a November 5, 2020 work capacity evaluation (Form OWCP-5c), Dr. Matthew Jaffe, a Board-certified orthopedic surgeon, diagnosed bilateral wrist sprains and opined that appellant was partially disabled. He indicated that she could perform sedentary work with no repetitive movements of the wrists and elbows, and pushing, pulling, and lifting no more than 10 pounds. Dr. Jaffe advised that appellant's previous light-duty job was appropriate. In a May 11, 2021 report, he diagnosed bilateral wrist tenosynovitis and left radial styloid tenosynovitis. Dr. Jaffe listed appellant's work restrictions as no lifting over 10 pounds and no repetitive use of the hands and fingers.

On May 25, 2021 OWCP referred appellant, together with the case record and a statement of accepted facts (SOAF), to Dr. Daniel Schlatterer, an osteopath and Board-certified orthopedic surgeon, for a second opinion evaluation. It requested that Dr. Schlatterer provide an opinion regarding whether she continued to have residuals or disability causally related to her March 24, 2020 employment injury.

In his June 16, 2021 report, Dr. Schlatterer reviewed the SOAF and the medical records, and performed a physical examination. He noted that, at the time of her injury, appellant worked light duty as a result of a November 4, 2017 employment injury, assigned OWCP File No. xxxxxx383. Appellant had surgery over the lateral epicondyle in 2017 due to this injury and

³ On March 25, 2020 appellant filed an occupational disease claim (Form CA-2) alleging that she developed bilateral wrist pain shooting to her bilateral elbows due to factors of her employment including lifting to door of the cart. An April 13, 2020 memorandum of telephone call (Form CA-110) reflects that she reported to OWCP that she had initially filed a traumatic injury claim as the injury on March 24, 2020 occurred at one time and on a single work shift.

returned to permanent clerical work. Dr. Schlatterer related that appellant had no residuals of her accepted March 24, 2020 employment injury and required no further treatment. He completed a Form OWCP-5c on June 16, 2021 and indicated that appellant was capable of performing her usual job without restrictions.

Dr. Jaffe provided notes dated September 13 through October 5, 2021 and duty status reports (Form CA-17) dated October 5, and December 14, 2021 diagnosing radial styloid tenosynovitis of both hands. He recommended modified duties. On February 15, 2022 Dr. Jaffe diagnosed nondisplaced fracture of the capitate (os magnum) bone of the right wrist as demonstrated by a February 7, 2022 arthrogram and magnetic resonance imaging (MRI) scan of the right wrist.

In a March 1, 2022 addendum, Dr. Schlatterer related that appellant had telephoned his office and reported that following his examination she experienced pain shooting from her wrist to her elbow. He concluded that this pain was nonorganic.

On March 10, 2022 Dr. Sierra Phillips, a Board-certified orthopedic surgeon, examined appellant and recounted her history of injury. She reviewed the February 7, 2022 right wrist MRI scan and diagnosed nondisplaced fracture of the capitate (os magnum) bone. Dr. Phillips opined that this stress fracture may have resulted from an employment injury and noted that appellant had experienced a “prolonged recovery due to repetitive use.” She completed a form report of even date and restricted all use of appellant’s right hand. On March 31 and April 20 2022 Dr. Phillips completed CA-17 forms and indicated that appellant could not use her right hand due to a nondisplaced fracture of the capitate bone. In a March 31, 2022 note, she diagnosed nondisplaced fracture of capitate right wrist, transient synovitis of the right wrist, and right de Quervain’s tenosynovitis.

On March 30, 2022 OWCP requested that Dr. Schlatterer clarify the objective findings that corresponded to appellant’s right lateral epicondylitis and left elbow radial and styloid tenosynovitis, which it noted were accepted conditions. It further requested that he address whether appellant could resume her usual employment and whether the accepted employment-related condition had resolved.

In an April 4, 2022 clarification, Dr. Schlatterer reviewed his June 16, 2021 physical examination and determined that there were no changes to his opinion after considering the previously accepted elbow conditions in OWCP File No. xxxxxx383. He advised that the findings in his OWCP-5c form were unchanged.

On April 20, 2022 Dr. Phillips completed an attending physician’s report (Form CA-20) and a Form CA-17 and indicated that on March 24, 2020 appellant injured both wrists and elbows lifting a metal door. She diagnosed stress fracture of the right capitate and right de Quervain’s tenosynovitis. Dr. Phillips checked a box marked “Yes” indicating that she believed that the conditions found were caused or aggravated by an employment activity. She related that appellant was unable to use her right hand or arm. Dr. Phillips completed a note of even date and found that she was nontender over the stress fracture of the capitate, but exhibited generalized tenderness to palpation about the wrist. She determined that appellant’s diagnostic studies were normal and advised that she had no explanation for the cause of her continued right wrist pain. On May 25,

2022 Dr. Phillips repeated her diagnoses, related that she had no further treatment options for appellant and recommended a functional capacity evaluation (FCE). On August 4, 2022 she related that she had no treatments to offer appellant and reviewed the July 19, 2022 FCE which determined that appellant could work with a lifting restriction of five pounds. Dr. Phillips examined her on November 2, 2022 due to right upper extremity pain from the elbow to the hand. She reviewed appellant's diagnostic studies and diagnosed transient synovitis of the right wrist and stress fracture of the right capitate. Dr. Phillips reported that appellant had ongoing neck pathology from a nonemployment-related motor vehicle accident that could be contributing to her upper extremity pain. She continued to support a lifting restriction of five pounds.

On November 10, 2022 Dr. Jaffe examined appellant and diagnosed transient synovitis of the right wrist and lateral epicondylitis of the right elbow. He recounted that she wanted to be put at no use of her hands while at work. Dr. Jaffe performed a right elbow injection. He found that appellant was able to work a sedentary job with permanent restrictions of no lifting over five pounds and no repetitive motion of the right arm.

Appellant returned to full-time light-duty work⁴ effective December 1, 2022.

In a January 6, 2023 report, Dr. Jaffe opined that appellant had reached maximum medical improvement. He repeated his work restrictions and recounted that she reported that she was required to exceed her work restrictions.

In June 7 and 8, 2023 CA-110 forms, appellant indicated that the employing establishment no longer had work available for her within her light-duty work restrictions. For the period May 20 through June 16, 2023 the employing establishment completed Time Analysis Forms (Form CA-7a) dated June 9 and July 4, 2023 reporting that she used leave without pay (LWOP) as there was "no work available."⁵ Appellant filed a series of claims for compensation (Form CA-7) requesting wage-loss compensation for intermittent total disability from work beginning May 20, 2023.

In a letter dated July 21, 2023, OWCP acknowledged appellant's claims for compensation beginning May 20, 2023, and related that the claims had been placed in development status but could not be paid as there was a conflict of medical opinion regarding her work capacity which required resolution.

On November 1, 2023 OWCP referred appellant, the medical record, a SOAF that included both the November 4, 2017 and March 24, 2020 accepted conditions of bilateral wrist sprains, bilateral elbow lateral epicondylitis, and radial styloid tenosynovitis, and a series of questions to Dr. John Evans, a Board-certified orthopedic surgeon, for an impartial medical examination to resolve the conflict in the medical opinion evidence.

In a report dated January 18, 2024, Dr. Evans, serving as the impartial medical examiner (IME), noted appellant's history of injuries on November 4, 2017, and March 24, 2020 and

⁴ The record does not contain a copy of her modified-duty position description.

⁵ Appellant worked 1.5 hours on May 30, 2023 and 3 hours a day on both June 3 and 5, 2023.

described her medical treatment. He examined her and recounted her symptoms of continuing right wrist and elbow pain with resolved symptoms in the left wrist and elbow. Dr. Evans diagnosed nonspecific right wrist pain, residual symptoms without consistent objective findings and right lateral epicondylitis, residual symptoms without consistent objective findings. He opined that the accepted diagnoses of radial styloid tenosynovitis and lateral epicondylitis were not caused by her accepted employment incidents based on his review of medical publications. Dr. Evans found that these conditions could not be caused by work and that the dating of appellant's symptoms to the employment incidents were subjective and not supported by objective findings. He further found no objective findings of right elbow lateral epicondylitis and left elbow radial styloid tenosynovitis. Dr. Evans determined that appellant could return to her date-of-injury position without restrictions and completed a Form OWCP-5c indicating that she could perform heavy strength level work. He found no objective, anatomic, or musculoskeletal condition currently established. Dr. Evans further found that the diagnosis of stress fracture of the capitate as demonstrated by the February 7, 2022 MRI scan was not confirmed by findings on physical examination.

In a March 6, 2024 notice, OWCP advised appellant that it proposed to terminate her wage-loss compensation and medical benefits because she had no further residuals or disability causally related to her accepted March 24, 2020 employment injury. It informed her that the special weight of the medical opinion evidence with respect to work-related residuals and disability rested with Dr. Evans' January 18, 2024 report. OWCP afforded appellant 30 days to submit evidence and argument challenging the proposed termination action.

By decision dated March 6, 2024, OWCP found that appellant had not established employment-related disability commencing May 20, 2023 due to her accepted March 24, 2020 employment injury. It found that the opinion of the IME, Dr. Evans, constituted the special weight of the medical evidence and established that appellant had no ongoing employment-related disability.

In March 13 and 15, 2024 narrative statements, appellant disagreed with the proposed termination.

By decision dated April 12, 2024, OWCP terminated appellant's wage-loss compensation and medical benefits, effective that date, finding that the special weight of the medical evidence rested with Dr. Evans, the IME, and established that she had no further employment-related disability or need for medical treatment.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA⁶ has the burden of proof to establish the essential elements of his or her claim including that any disability or specific condition for which

⁶ *Supra* note 2.

compensation is claimed is causally related to the employment injury.⁷ Under FECA, the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁸ For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.⁹ Whether a particular injury causes an employee to become disabled from work, and the duration of that disability, are medical issues that must be proven by a preponderance of probative and reliable medical opinion evidence.¹⁰

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition that had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. The term also means an inability to work when a light-duty assignment made specifically to accommodate an employee's physical limitations due to the work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force), or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.¹¹

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that, light duty can be performed, the employee has the burden of proof to establish by the weight of reliable, probative, and substantial evidence a recurrence of total disability. As part of this burden of proof, the employee must show either a change in the nature and extent of the injury-related condition, or a change in the nature and extent of the limited-duty requirements.¹²

ANALYSIS -- ISSUE 1

The Board finds that this case is not in posture for decision.

Appellant asserted that she returned to full-time light-duty work effective December 1, 2022. The employing establishment completed CA-7a forms, on June 9 and July 4, 2023 reporting that she used LWOP as there was "no work available." Appellant's physician,

⁷ See *D.S.*, Docket No. 20-0638 (issued November 17, 2020); *F.H.*, Docket No. 18-0160 (issued August 23, 2019); *C.R.*, Docket No. 18-1805 (issued May 10, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁸ 20 C.F.R. § 10.5(f); *J.S.*, Docket No. 19-1035 (issued January 24, 2020).

⁹ *T.W.*, Docket No. 19-1286 (issued January 13, 2020).

¹⁰ *S.G.*, Docket No. 18-1076 (issued April 11, 2019); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

¹¹ 20 C.F.R. § 10.5(x); see *E.D.*, Docket No. 21-1368 (issued September 7, 2023); *D.T.*, Docket No. 19-1064 (issued February 20, 2020).

¹² *C.B.*, Docket No. 19-0464 (issued May 22, 2020); see *R.N.*, Docket No. 19-1685 (issued February 26, 2020); *Terry R. Hedman*, 38 ECAB 222 (1986).

Dr. Phillips indicated that she should not lift over five pounds, while Dr. Jaffe added the additional restriction of no use of her right hand.

The Board finds that, in this case, the factual evidence of record is insufficient to determine whether the employing establishment withdrew a light-duty position, which would indicate a recurrence of disability.¹³ As noted above, a recurrence of disability can be established under this scenario.¹⁴ The employing establishment completed a Form CA-7a indicating that there was no work available while appellant provided statements to OWCP that there was no work available. However, the record does not contain the position description addressing whether she was performing modified duties within her restrictions at the time she stopped work.¹⁵

It is well established that proceedings under FECA are not adversarial in nature, and while appellant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.¹⁶ It has an obligation to see that justice is done.¹⁷ Thus, the Board will remand the case for OWCP to request that the employing establishment confirm that there was no work available within appellant's restrictions. Following 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 termination or modification of an employee's benefits.¹⁸ 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

¹³ *M.A.*, Docket No. 23-0713 (issued April 26, 2024); *L.F.*, Docket No. 19-0519 (issued October 24, 2019); *see also M.S.*, Docket No. 18-0130 (issued September 17, 2018).

¹⁴ 20 C.F.R. § 10.5(x); *M.A., id.*; *T.J.*, Docket No. 18-0831 (issued March 23, 2020); *J.D.*, Docket No. 18-1533 (issued February 27, 2019).

¹⁵ *See T.R.*, Docket No. 19-1611 (issued October 26, 2020); *see also P.H.*, Docket No. 20-0039 (issued April 23, 2020).

¹⁶ *See M.G.*, Docket No. 18-1310 (issued April 16, 2019); *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985); *Michael Gallo*, 29 ECAB 159, 161 (1978); *William N. Saathoff*, 8 ECAB 769-71; *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985).

¹⁷ *See A.J.*, Docket No. 18-0905 (issued December 10, 2018); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

¹⁸ *See D.B.*, Docket No. 19-0663 (issued August 27, 2020); *D.G.*, Docket No. 19-1259 (issued January 29, 2020); *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

the employment.¹⁹ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.²⁰

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.²¹ 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.²²

Where OWCP has referred the case to an IME to resolve a conflict in the medical evidence, the opinion of such specialist, if sufficiently well-reasoned and based upon a proper factual background, must be given special weight.²³

ANALYSIS -- ISSUE 2

The Board finds that OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective April 12, 2024.

OWCP accepted that appellant sustained bilateral wrist sprains on November 4, 2017 and March 24, 2020, and bilateral lateral epicondylitis of the elbows and bilateral radial styloid tenosynovitis on November 4, 2017. It found a conflict in medical opinion between appellant's physicians, Drs. Jaffe and Phillips, and Dr. Schlatterer, OWCP's second opinion examiner, regarding whether her accepted employment conditions had resolved and if she had continuing disability as a result of the accepted employment injuries. OWCP referred appellant, together with a SOAF, to Dr. Evans for an impartial medical examination, pursuant to 5 U.S.C. § 8123(a). The SOAF provided to him specifically noted that her claim was accepted for bilateral lateral epicondylitis of the elbows and bilateral radial styloid tenosynovitis.

In his report dated January 18, 2024, Dr. Evans, in addressing whether the accepted conditions of bilateral lateral epicondylitis and bilateral radial styloid tenosynovitis had resolved, opined that the accepted employment injuries did not either cause or contribute to either of these conditions. He found that these conditions could not be caused by work and that the dating of appellant's symptoms to the work incidents was subjective and not supported by objective

¹⁹ See *D.B., id.*; *D.G., id.*; *R.P., id.*; *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

²⁰ *K.W.*, Docket No. 19-1224 (issued November 15, 2019); see *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

²¹ *A.G.*, Docket No. 19-0220 (issued August 1, 2019); *A.P.*, Docket No. 08-1822 (issued August 5, 2009); *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005); *Furman G. Peake*, 41 ECAB 361, 364 (1990).

²² *K.W.*, *supra* note 20; see *A.G., id.*; *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002); *Furman G. Peake, id.*

²³ See *O.O., Jr.*, Docket No. 21-1149 (issued March 15, 2022); *K.C.*, Docket No. 20-1628 (issued September 1, 2021); *Y.I.*, Docket No. 20-0263 (issued November 30, 2020); *Gary R. Sieber*, 46 ECAB 215, 225 (1994); *James P. Roberts*, 31 ECAB 1010 (1980).

findings. Although Dr. Evans asserted that he would follow the framework of the SOAF, he nonetheless reached conclusions that were contrary to the findings in the SOAF.

It is OWCP's responsibility to provide a complete and proper frame of reference for a physician by preparing a SOAF. 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.²⁴ 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.²⁵

As Dr. Evans did not use the SOAF as the framework in reaching his conclusions, his opinion is, therefore of diminished probative value.²⁶ The Board, thus, finds that Dr. Evans report is of diminished probative value and is not entitled to the special weight accorded to an IME.²⁷ As such, OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective April 12, 2024.

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether appellant has met her burden of proof to establish a recurrence of disability commencing May 20, 2023. The Board further finds that OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective April 12, 2024.

²⁴ *P.H.*, Docket No. 23-0665 (issued October 13, 2023); *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).

²⁵ *See P.H., id.; V.L.*, Docket No. 22-0336 (issued September 28, 2022); *N.W.*, Docket No. 16-1890 (issued June 5, 2017); *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

²⁶ *Id.*; *see also Y.D.*, Docket No. 17-0461 (issued July 11, 2017).

²⁷ *See S.T.*, Docket No. 18-1144 (issued August 9, 2019) (medical opinions based on an incomplete or inaccurate history are of limited probative value).

ORDER

IT IS HEREBY ORDERED THAT the March 6, 2024 recurrence decision of the Office of Workers' Compensation Programs is set aside and remanded for further proceedings consistent with this decision of the Board. The April 12, 2024 termination decision of the Office of Workers' Compensation Programs is reversed.

Issued: October 8, 2024
Washington, DC

Alec J. Koromilas, 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