

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

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| A.N., Appellant |) | |
| |) | |
| and |) | Docket No. 24-0531 |
| |) | Issued: September 4, 2024 |
| U.S. POSTAL SERVICE, SANTA CLARITA |) | |
| MAIL PROCESSING & DISTRIBUTION |) | |
| CENTER, Santa Clarita, CA, Employer |) | |
| |) | |

Appearances:
Michael J. Watson, 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 April 22, 2024 appellant, through her representative, filed a timely appeal from a March 28, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP).²

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 The Board notes that, following the March 28, 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.*

Pursuant to the Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

ISSUE

The issue is whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective March 28, 2024, as she no longer had disability or medical residuals causally related to her accepted June 21, 2022 employment injury.

FACTUAL HISTORY

On July 22, 2022 appellant, then a 57-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on June 21, 2022 she injured her lower back in a motor vehicle accident (MVA) when a driver ran a stop sign and "T-boned" her delivery vehicle while she was in the performance of duty. She stopped work on June 23, 2022. OWCP accepted the claim for lumbar sprain and lumbar radiculopathy. It paid appellant wage-loss compensation on the supplemental rolls commencing August 13, 2022, and on the periodic rolls commencing February 25, 2023.

On April 11, 2023, OWCP referred appellant, together with the case record, and a statement of accepted facts (SOAF) to Dr. Clive Segil, a Board-certified orthopedic surgeon, for a second opinion examination. It requested that Dr. Segil provide an opinion regarding whether appellant continued to have disability causally related to her accepted June 21, 2022 employment injury.

Dr. Greg Khouganian, an orthopedic surgeon, examined appellant on April 13, 2023 and found limited range of motion of the lumbar spine and positive straight leg raising bilaterally, both sitting and supine. He reviewed appellant's April 3, 2023 magnetic resonance imaging (MRI) scan of the lumbar spine and diagnosed disc protrusions at L4-5 and L5-S1 causing foraminal stenosis and left exiting L4 nerve root compression at the left L4-5 level with lumbar spine spondylosis. Dr. Khouganian recommended a lumbar decompression L4-5 and L5-S1. He opined that these conditions were caused by the accepted employment injury.

On April 20, 2023, Dr. David L. Lemons, a chiropractor, diagnosed lumbar disc injury due to an MVA and found that appellant was disabled from April 20 through August 1, 2023.

In a May 11, 2023 report, Dr. Segil discussed appellant's history of injury and medical treatment. He recounted her symptoms of pain on the right side of the spine, radiating down her right leg into her right and left feet and into her jaw with numbness of the whole right leg into her foot. Dr. Segil related that appellant exhibited no tenderness or deformity of the lumbar spine, that she walked well without disturbance of stance or gait, could heel and toe walk, and exhibited negative straight leg raising, no evidence of sciatic tenderness, no motor wasting or weakness, and no disturbance to pinprick or light touch. He reviewed appellant's April 3, 2023 MRI scan, finding a minor disc herniation at L4-5, narrowing of the L5-S1 disc space and chronic degenerative disc disease throughout the lumbar spine. Dr. Segil diagnosed lumbosacral sprain and opined that this was the only diagnosis in connection with the accepted June 21, 2022 employment injury. He determined that the accepted work-related condition had completely resolved and that there was

³ 5 U.S.C. § 8101 *et seq.*

no need for further medical treatment. Dr. Segil concluded that appellant was capable of returning to her date-of-injury position as her examination was essentially normal. He completed a work capacity evaluation (Form OWCP-5c) and again opined that she could return to her usual job with no restrictions and could work within any strength level.

On June 22, 2023 OWCP requested a supplemental report from Dr. Segil addressing the accepted condition of lumbar radiculopathy. He responded on July 25, 2023 and opined that appellant's examination revealed no evidence of lumbar radiculopathy and that this condition had completely resolved with no need for further treatment. Dr. Segil again found that appellant was capable of performing the duties of her date-of-injury position.

On August 24, 2023 OWCP requested a supplemental report from Dr. Segil addressing Dr. Khounganian's diagnoses of intervertebral disc displacement and his recommendation of lumbar decompression surgery at L4-5 and L5-S1.

In a September 21, 2023 supplemental report, Dr. Segil reviewed Dr. Khounganian's April 13, 2023 report and reviewed the May 11, 2023 findings on physical examination. He noted appellant's unusual description of pain radiation, almost normal lumbar range of motion, negative straight leg raising bilaterally, and the absence of neurological abnormalities in the lower extremities. Dr. Segil related that she did not require surgery finding that there was no evidence clinically to suggest that it was necessary therefore rendering it unwarranted. He opined that as a result of the accepted employment injury appellant sustained a minor injury to her lumbar spine, which may have aggravated a lumbar pain complaint, but did not result in intervertebral disc displacement. Dr. Segil concluded that based on the specific findings on examination and his medical experience her work-related conditions had resolved.

Dr. Payam Vahedifar, a Board-certified physiatrist, examined appellant on November 9, 2023. He related that she was experiencing continued lower back pain with radiation into her legs. Dr. Vahedifar described findings on physical examination including positive tenderness in the bilateral paraspinals and lumbar facets. He found that range of motion was limited due to pain, but that motor strength and gait were normal. Dr. Vahedifar reviewed appellant's diagnostic studies and diagnosed lumbar radiculopathy, lumbar strain, and protrusion of lumbar intervertebral disc due to a motor vehicle accident. He found that she was totally disabled and recommended additional caudal epidural injections. Dr. Vahedifar opined that appellant had objective findings on her lumbar MRI scan and subjective findings on physical examination pointing to radiculopathy and nerve symptoms in the lower extremities. He opined that her diagnosed conditions were caused by her accepted employment injury.

On November 20, 2023 Dr. Khounganian examined appellant and found limited range of motion of the lumbar spine secondary to pain and stiffness. He also related findings of bilateral positive straight leg raising both sitting and supine. Dr. Khounganian found tenderness to palpation over the bilateral paraspinals. He recounted her significant lower back pain and persistent radicular symptoms in the lower extremities secondary to disc herniations at L4-5 and L5-S1. Dr. Khounganian again recommended L4-5 and L5-S1 lumbar decompression based on diagnostic studies and his findings on physical examination. He further opined that within a reasonable degree of medical probability appellant's diagnoses were caused by her accepted employment incident.

Dr. Khounganian completed a December 6, 2023 report relating that he first examined appellant on August 15, 2022 due to low back pain following the June 21, 2022 MVA. He explained that the side impact from the accepted employment injury led to a rapid and forceful jolt, resulting in disc herniations in her lumbar spine. Dr. Khounganian again reviewed the lumbar spine MRI scan and diagnosed a disc herniation at L5-S1 with distortion, compression, and impingement of the L5 nerve roots. He expressly disagreed with Dr. Segil's findings and conclusions opining that the accepted MVA was responsible for appellant's lumbar spine pathology.

In a December 14, 2023 letter, appellant's representative requested that the acceptance of appellant's claim be expanded to include additional lumbar spine conditions as diagnosed by Drs. Khounganian and Vahedifar.

On December 21, 2023 Dr. Lemons continued to find that appellant was totally disabled from work due to lumbar disc herniation.

In a February 15, 2024 notice, OWCP advised appellant that it proposed to terminate her wage-loss compensation and medical benefits because she ceased to have residuals or disability causally related to her accepted June 21, 2022 employment injury. It informed her that the weight of the medical opinion evidence with respect to work-related residuals and disability rested with Dr. Segil's reports dated May 11, July 25, and September 21, 2023. OWCP afforded appellant 30 days to submit evidence and argument challenging the proposed termination action.

On March 13, 2024 appellant's representative responded and argued that Dr. Khounganian's reports created a conflict of medical opinion evidence with those of Dr. Segil.

By decision dated March 28, 2024, OWCP finalized the termination of appellant's wage-loss compensation and medical benefits, effective that date, because she had no residuals or disability causally related to her accepted June 21, 2022 employment injury. It found that the weight of the medical opinion evidence rested with Dr. Segil's reports dated May 11, July 25, and September 21, 2023.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of an employee's benefits.⁴ 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

⁴ *K. T.*, Docket No. 22-1038 (issued June 22, 2023); *M. M.*, Docket No. 17-1264 (issued December 3, 2018); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

the employment.⁵ Its 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 appellant no longer has residuals of an employment-related condition which require further medical treatment.⁸

Section 8123(a) of FECA provides that if there is a disagreement between the physician making the examination for the United States and the physician of an employee, the Secretary shall appoint a third physician (known as a referee physician or impartial medical examiner (IME)) who shall make an examination.⁹ For a conflict to arise the opposing physicians' viewpoints must be of virtually equal weight and rationale.¹⁰

ANALYSIS

The Board finds that OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective March 28, 2024.

Appellant's physicians, Drs. Khouganian and Vahedifar completed reports dated April 13, through December 6, 2023 relating that her accepted condition of lumbar radiculopathy was ongoing, and that she remained disabled. These physicians further supported that she sustained the additional condition of herniated lumbar disc at L4-5 due to the accepted employment incident and that she required further medical treatment.

Dr. Segil, in reports dated May 11 through September 21, 2023, opined that appellant's work-related back conditions had resolved with no need for further medical treatment as there was no evidence to support that the work-related conditions were still active and causing objective findings related to the accepted June 21, 2022 employment injury. In the OWCP-5c form dated May 11, 2023, he indicated that she could return to her date-of-injury position without restrictions.

It is well established that where there are opposing medical reports of virtually equal probative value between an attending physician and a second opinion physician, 5 U.S.C.

⁵ *T.N.*, Docket No. 22-0721 (issued September 14, 2022); *A.T.*, Docket No. 20-0334 (issued October 8, 2020); *E.B.*, Docket No. 18-1060 (issued November 1, 2018).

⁶ *T.N.*, *id.*; *R.L.*, Docket No. 20-1611 (issued September 30, 2022); *C.R.*, Docket No. 19-1132 (issued October 1, 2020); *Del K. Rykert*, 40 ECAB 284 (1988).

⁷ *R.Z.*, Docket No. 23-0351 (issued December 21, 2023); *J.P.*, Docket No. 23-0075 (issued May 26, 2023); *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).

⁸ *See A.G.*, *id.*; *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002).

⁹ 5 U.S.C. § 8123(a); *R.H.*, Docket No. 20-1442 (issued February 9, 2022); *Q.S.*, Docket No. 20-0701 (issued November 10, 2021).

¹⁰ *R.H.*, *id.*; *Darlene R. Kennedy*, 57 ECAB 414, 416 (2006); *James P. Roberts*, 30 ECAB 1010 (1980).

§ 8123(a) requires OWCP to refer the case to a referee physician to resolve the conflict.¹¹ The Board finds that the medical reports of Drs. Segil, Khouganian, and Vahedifar are in equipoise on the issues of whether appellant was capable of returning to work, and whether she required further medical treatment and are thus in conflict. The Board, therefore, finds that OWCP should have resolved this conflict of medical evidence before terminating appellant's wage-loss compensation and medical benefits.¹²

As there is an unresolved conflict of medical opinion, OWCP failed to meet its burden of proof to justify termination of her wage-loss compensation and medical benefits.

CONCLUSION

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective March 28, 2024.

ORDER

IT IS HEREBY ORDERED THAT the March 28, 2024 decision of the Office of Workers' Compensation Programs is reversed.

Issued: September 4, 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

¹¹ *J.J.*, Docket No. 23-0973 (issued January 2, 2024); *Id.*

¹² *Id.*