

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

R.G., Appellant	)	
	)	
and	)	<b>Docket No. 24-0735</b>
	)	<b>Issued: September 3, 2024</b>
U.S. POSTAL SERVICE, DOMINICK V.	)	
DANIELS PROCESSING & DISTRIBUTION	)	
CENTER, Kearny, NJ, Employer	)	
	)	

*Appearances:* *Case Submitted on the Record*  
Michael D. Overman, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

**DECISION AND ORDER**

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

**JURISDICTION**

On June 28, 2024 appellant, through counsel, filed a timely appeal from a May 14, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</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 appellant has met his burden of proof to establish continuing disability or residuals on or after September 13, 2021, causally related to his accepted February 8, 2004 employment injury.

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<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>3</sup> The facts and circumstances of the case as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On February 8, 2004 appellant, then a 34-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on that date he sustained a right-sided lower back injury when he used a manual jack to remove heavy boxes from a bundle sorter while in the performance of duty. He then began working in a limited-duty position as a full-time modified mail handler. OWCP accepted appellant's claim for lumbosacral sprain/strain. Appellant intermittently stopped work, thereafter, and OWCP paid him wage-loss compensation for disability from work on the supplemental rolls, effective March 25, 2004, and on the periodic rolls, effective June 13, 2004.

Commencing in early-2004, appellant came under the care of Dr. Juluru P. Rao, a Board-certified orthopedic surgeon. In a January 6, 2020 report, Dr. Rao diagnosed herniated nucleus pulposus (HNP) at L4-5 and L5-S1, and opined that appellant's condition was a direct result of the accepted February 8, 2004 employment injury. In a January 7, 2020 attending physician's report (Form CA-20), he diagnosed HNP at L4-5 and L5-S1 due to the reported employment activity and indicated that appellant was totally disabled from work from February 8, 2004 to "lifetime."

On April 2, 2021 OWCP referred appellant, along with the medical record, a statement of accepted facts (SOAF) and a series of questions, to Dr. Frank Corrigan, a Board-certified orthopedic surgeon, for a second opinion examination regarding whether appellant had continuing work-related disability/residuals.

In an April 29, 2021 report, Dr. Corrigan noted physical examination findings, and opined that appellant had fully recovered from the accepted February 8, 2004 employment injury, and had no residuals of the accepted lumbosacral sprain. He noted that the disc pathology seen on appellant's diagnostic testing was exceedingly prevalent in his generational population. Dr. Corrigan opined that appellant continued to suffer from symptoms unrelated to the accepted February 8, 2004 soft-tissue injury of lumbosacral sprain, in that he suffered from a degenerative disc pathology, which was unrelated to the accepted February 8, 2004 employment injury. In an April 29, 2021 work capacity evaluation (Form OWCP-5c), he advised that appellant could work on a full-time basis, and noted that, due to his nonwork-related condition, he was restricted from lifting/pushing/pulling more than 20 pounds.

OWCP requested that Dr. Corrigan provide a supplemental report clarifying the cause of appellant's need for work restrictions. In a June 24, 2021 supplemental report, Dr. Corrigan indicated that the work restrictions he provided on April 29, 2021 were necessitated by appellant's chronic and degenerative pathology, and were not necessitated by the accepted condition of lumbosacral sprain.

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<sup>3</sup> Docket No. 22-0165 (issued August 11, 2022); Docket No. 23-0754 (issued November 27, 2023).

In a July 23, 2021 notice, OWCP advised appellant that it proposed to terminate his wage-loss compensation and medical benefits because he no longer had disability, or residuals causally related to his accepted February 8, 2004 employment injury. It found that the weight of the medical opinion evidence regarding work-related disability and residuals rested with the well-rationalized opinion of Dr. Corrigan. OWCP afforded appellant 30 days to submit additional evidence or argument challenging the proposed termination action. Appellant did not respond.

By decision dated September 13, 2021, OWCP finalized the notice of proposed termination of appellant's wage-loss compensation and medical benefits, effective that date, as he no longer had disability or residuals causally related to his accepted February 8, 2004 employment injury. It found that the weight of the medical evidence opinion rested with Dr. Corrigan's opinion.

On September 14, 2021 OWCP received an August 21, 2021 report from Dr. Rao who found total disability and diagnosed HNP at L4-5 and L5-S1. Dr. Rao opined that appellant's medical condition was a direct result of the accepted February 8, 2004 employment injury. On September 28, 2021 appellant requested reconsideration of the September 13, 2021 decision.

By decision dated October 19, 2021, OWCP denied modification of its September 13, 2021 decision. It found that the termination action was proper, and that appellant, thereafter, failed to submit sufficient medical evidence to establish that he had continuing disability and residuals on or after September 13, 2021 causally related to the accepted February 8, 2004 employment injury.

Appellant appealed to the Board. By decision dated August 11, 2022,<sup>4</sup> the Board affirmed OWCP's October 19, 2021 decision, finding that OWCP properly terminated appellant's wage-loss compensation and medical benefits, effective September 13, 2021, and that appellant did not meet his burden of proof to establish continuing disability or residuals on or after September 13, 2021 causally related to his accepted February 8, 2004 employment injury.

On November 17, 2022 appellant, through counsel, requested reconsideration of his claim. Appellant submitted an October 22, 2022 report wherein Dr. Rao discussed the physical examination findings obtained on that date and opined that appellant's injuries were causally related to the accepted February 8, 2004 employment injury. Dr. Rao indicated that appellant was a healthy individual prior to February 8, 2004, with no preexisting back problems, and maintained that all symptoms of the lower back and lower extremities started after February 8, 2004.

By decision dated February 7, 2023, OWCP found that appellant did not meet his burden of proof to establish continuing disability or residuals on or after September 13, 2021, causally related to his accepted February 8, 2004 employment injury.

Appellant appealed to the Board. By decision dated November 27, 2023,<sup>5</sup> the Board affirmed OWCP's February 7, 2023 decision, finding that appellant did not meet his burden of

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<sup>4</sup> Docket No. 22-0165 (issued August 11, 2022).

<sup>5</sup> Docket No. 23-0754 (issued November 27, 2023).

proof to establish continuing disability or residuals on or after September 13, 2021 causally related to his accepted February 8, 2004 employment injury.

On January 26, 2024 appellant, through counsel, requested reconsideration. He submitted a January 15, 2024 report in which Dr. Rao discussed appellant's accepted February 8, 2004 employment injury and the results of a magnetic imaging resonance (MRI) scan of the lumbar spine. Dr. Rao noted that an intervertebral disc is a complex structure with a central gelatinous structure, called a nucleus pulposus, which is contained and surrounded by a peripheral structure called an annulus fibrosus. He indicated that degeneration, including rupture of the annulus fibrosus and herniation of the nucleus pulposus, starts happening in the fourth and fifth decades, and mostly is precipitated by a traumatic event. Dr. Rao stated, "[h]owever, a severe traumatic event, as sustained by [appellant] on February 8, 2004, can cause herniation of the disc to occur in a young person as [appellant], who was 34 years at the time of the incident." He advised that a March 12, 2004 MRI scan of the lumbar spine revealed a disc herniation at L5-S1, and a March 9, 2009 MRI scan of the lumbar spine revealed a disc herniation at L4-5. Dr. Rao maintained that, since appellant sustained a herniated disc at L5-S1 from the February 8, 2004 traumatic event, there was loss of mobility at L5-S1, causing more stress and mobility at L4-5, which led to a herniated disc at L4-5. He noted, "[t]his is a natural progression of the disc where stresses are transferred to a higher level, causing herniation at L4-5 level as it happened with [appellant]."

Dr. Rao discussed Dr. Corrigan's evaluation, and indicated that appellant had a severe traumatic incident, which caused his herniated disc when he was trying to lift a 200-pound box with a hand jack. He noted that appellant had reported he had weakness in his extensor hallucis longus muscle and restricted knee flexion/extension, and that he continued to experience significant lower back pain which radiated into the lower extremities. Dr. Rao stated that it was "quite clear from the biomechanical standpoint" that the herniated disc at L5-S1 happened secondary to the severe traumatic event in 2004, and "had led to progression of herniated disc at L4-5 level due to stress transfer to a higher level, leading to advanced multilevel disc disease." He advised that appellant continued to experience severe pain radiating to both lower extremities, along with lower extremity weakness, and was disabled from performing any occupation.

By decision dated January 31, 2024, OWCP found that appellant did not meet his burden of proof to establish continuing disability or residuals on or after September 13, 2021, causally related to his accepted February 8, 2004 employment injury.

On February 12 2024 appellant requested reconsideration and resubmitted a copy of Dr. Rao's January 15, 2024 report. He also submitted a February 7, 2024 MRI scan of the lumbar spine, which contained an impression of no fracture or bony destructive lesion, disc bulges at multiple levels associated with an annular tear at L4-5, no significant central canal stenosis, mild lateral recess stenoses at L2-3, L4-5, and L5-S1, and multilevel neural foraminal stenoses, worst at the left L2-3, L4-5, and L5-S1 levels (moderate grade).

By decision dated May 14, 2024, OWCP denied modification of its January 31, 2024 decision.

## 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.<sup>6</sup> After it has determined that, an employee has a disability causally related to his or her employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.<sup>7</sup> Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>8</sup> When OWCP properly terminates compensation benefits, the burden shifts to appellant to establish continuing residuals or disability after that date, causally related to the accepted employment injury.<sup>9</sup> To establish causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background, supporting such causal relationship.<sup>10</sup>

## ANALYSIS

The Board finds that appellant has not met his burden of proof to establish continuing disability or residuals on or after September 13, 2021, causally related to his accepted February 8, 2004 employment injury.

Preliminarily, the Board notes that, by decision dated August 11, 2022, it found that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective September 13, 2021, as he no longer had disability or residuals causally related to his accepted February 8, 2004 employment injury. A decision of the Board is final upon the expiration of 30 days following the date of its order and, in the absence of new review by the Director, the subject matter is *res judicata* and not subject to further consideration by the Board.<sup>11</sup> As OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective September 13, 2021, the issue of termination is not currently before the Board.<sup>12</sup>

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<sup>6</sup> *Z.D.*, Docket No. 19-0662 (issued December 5, 2019); *see 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).

<sup>7</sup> *See R.P., id.*; *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

<sup>8</sup> *See P.T.*, Docket No. 21-0328 (issued May 2, 2022); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

<sup>9</sup> *See S.M.*, Docket No. 18-0673 (issued January 25, 2019); *C.S.*, Docket No. 18-0952 (issued October 23, 2018); *Manuel Gill*, 52 ECAB 282 (2001).

<sup>10</sup> *Id.*

<sup>11</sup> *See R.L.*, Docket No. 23-0110 (issued July 28, 2023); *D.M.*, Docket No. 21-1209 (issued March 24, 2022); *T.R.*, Docket No. 20-0588 (issued June 25, 2021); *A.G.*, Docket No. 18-0329 (issued July 26, 2018); *Clinton E. Anthony, Jr.*, 49 ECAB 476, 479 (1998). There is no indication that a petition for reconsideration was filed within 30 days of the issuance of the Board's August 11, 2022 decision and the decision became final after 30 days had elapsed. *See* 20 C.F.R. § 501.6(d).

<sup>12</sup> *See id.*

The issue of the present case is whether appellant has met his burden of proof to establish continuing disability or residuals on or after September 13, 2021, causally related to his accepted February 8, 2004 employment injury.<sup>13</sup> The Board notes that it is unnecessary to reconsider the evidence appellant submitted prior to the issuance of OWCP's February 7, 2023 decision because the Board already considered this evidence in its November 27, 2023 decision affirming OWCP's February 7, 2023 decision.<sup>14</sup>

After the issuance of OWCP's February 7, 2023 decision, appellant submitted additional evidence including a January 15, 2024 report of Dr. Rao, an attending physician. In this report, the physician discussed the findings of appellant's lumbar spine MRI scans and posited that he had disc herniations at L4-5 and L5-S1 due to the February 8, 2004 employment injury. Dr. Rao generally discussed the nature of disc degeneration of the spine and stated that "a severe traumatic event, as sustained by [appellant] on February 8, 2004, can cause herniation of the disc to occur in a young person as [appellant], who was 34 years at the time of the incident." He maintained that, since appellant sustained a herniated disc at LS-S1 level from the traumatic event of February 8, 2004, there was loss of mobility at L5-S1, causing more stress and mobility at L4-5, which led to a herniated disc at L4-5. Dr. Rao stated, "[t]his is a natural progression of the disc where stresses are transferred to a higher level, causing herniation at L4-5 level as it happened with [appellant]." He noted that it was "quite clear from the biomechanical standpoint" that the herniated disc at L5-S1 happened secondary to the severe traumatic event in 2004 and he found that appellant was totally disabled.

The Board finds that Dr. Rao's January 15, 2024 report does not contain sufficient medical rationale to establish that appellant had continuing disability or residuals on or after September 13, 2021, causally related to his accepted February 8, 2004 employment injury. Appellant's claim has only been accepted for lumbosacral sprain/strain and Dr. Rao's opinion that appellant sustained more serious conditions related to the accepted February 8, 2004 employment injury lacks an adequate medical explanation. The Board has held that reports that do not contain medical rationale explaining how the accepted employment injury caused or contributed to the claimed disability/residuals are of limited probative value regarding causal relationship.<sup>15</sup> Therefore, this evidence is insufficient to establish appellant's claim.

Appellant also submitted a February 7, 2024 MRI scan of the lumbar spine. However, diagnostic studies, standing alone, lack probative value as they do not address whether an accepted employment condition caused the claimed disability/residuals.<sup>16</sup> Therefore, this report

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<sup>13</sup> When OWCP properly terminates compensation benefits, as it has in the present case, the burden shifts to appellant to establish continuing residuals or disability after the date of termination. *See supra* note 9.

<sup>14</sup> *See A.B.*, Docket No. 20-1139 (issued June 30, 2021); *M.M.*, Docket No. 18-1366 (issued February 27, 2019); *E.C.*, Docket No. 17-1765 (issued January 24, 2018); *E.L.*, Docket No. 16-0635 (issued November 7, 2016); *Clinton E. Anthony, Jr.*, *supra* note 11.

<sup>15</sup> *See T.T.*, Docket No. 18-1054 (issued April 8, 2020); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017). *See also L.G.*, Docket No. 19-0142 (issued August 8, 2019) (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

<sup>16</sup> *See A.V.*, Docket No. 19-1575 (issued June 11, 2020).

does not establish that appellant had continuing disability or residuals on or after September 13, 2021, causally related to his accepted February 8, 2004 employment injury.<sup>17</sup>

As the medical evidence of record is insufficient to establish causal relationship between the claimed period of disability/residuals and the accepted February 8, 2004 employment injury, the Board finds that appellant has not met his burden of proof.

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 appellant has not met his burden of proof to establish continuing disability or residuals on or after September 13, 2021, causally related to his accepted February 8, 2004 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 14, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 3, 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

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<sup>17</sup> *Id.*