



Federal Employees' Compensation Act<sup>3</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>4</sup>

### **ISSUES**

The issues are: (1) whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective June 5, 2023, as she no longer had disability or residuals causally related to her accepted August 12, 2019 employment injury; and (2) whether appellant has met her burden of proof to establish continuing disability or residuals on or after June 5, 2023, causally related to the accepted August 12, 2019 employment injury.

### **FACTUAL HISTORY**

On August 13, 2019 appellant, then a 33-year-old medical supply technician, filed a traumatic injury claim (Form CA-1) alleging that on August 12, 2019 she sustained injuries to her left knee when lifting two bins and placing them on a pallet, while in the performance of duty. She stopped work on August 14, 2019 and worked intermittently thereafter. OWCP accepted the claim for sprain of the anterior cruciate ligament (ACL) of the right knee. It paid appellant wage-loss compensation on the supplemental rolls effective October 18, 2019, and on the periodic rolls effective February 27, 2022.<sup>5</sup>

On February 14, 2022 OWCP referred appellant, along with the case record, a statement of accepted facts (SOAF), and a series of questions to Dr. D. Kevin Lester, a Board-certified orthopedic surgeon, for a second opinion examination regarding the status of appellant's accepted conditions.

In an April 21, 2022 report, Dr. Lester discussed the August 12, 2019 employment injury and appellant's complaints of right knee pain. He noted findings on examination of a limp, halting gait, and decreased range of motion. However, Dr. Lester also noted no quadriceps atrophy, skin or hair changes about the knee/leg, or effusion about the knee, and intact knee ligaments. He diagnosed pain to the right knee with no evidence of ACL rupture or injury and resolved sprain of the ACL right knee. Dr. Lester noted that appellant's objective findings did not correspond to her subjective complaints. He opined that there were no objective findings that would preclude her from bending her knee or acting fully functional. Dr. Lester indicated that appellant objectively could return to her previous work because her range of motion was self-limiting. In a work capacity evaluation (Form OWCP-5c), he noted that appellant was capable of performing full-time, regular duty, without restrictions, and no further treatment was indicated.

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<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

<sup>4</sup> The Board notes that, following the April 19, 2024 decision, appellant submitted additional evidence to OWCP. 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.*

<sup>5</sup> On December 20, 2021 appellant was separated from employment for cause.

Dr. Robert Miller, a Board-certified physiatrist, treated appellant on May 16, 2022 and noted a history of right knee ACL sprain and chronic right knee pain. On May 26, 2022 he related that appellant sustained a right knee ACL sprain in 2019, after lifting a heavy container and twisting her right knee while at work. Dr. Miller indicated that appellant used a knee brace for ambulation. He noted minimal swelling to the right knee in the medial and lateral joint line, minimal crepitus, restricted range of motion, and intact strength. Dr. Miller diagnosed a right knee ACL sprain and chronic right knee pain with limited range of motion. He opined that appellant was permanently disabled from work.

On May 24, 2022 OWCP requested that Dr. Lester provide a supplemental report addressing whether appellant continued to suffer objective residuals of the accepted employment injury.

In a supplemental report dated May 27, 2022, Dr. Lester clarified that there were no objective residuals from the ACL sprain.

In an attending physician's report (Form CA-20) dated December 1, 2022, Dr. Miller related appellant's history of injury and provided a diagnosis of sprain of the ACL of the right knee. He checked a box marked "Yes" indicating that appellant's condition was caused or aggravated by the employment activity. Dr. Miller noted that appellant could return to work on February 23, 2021, with restrictions. On December 5, 2022 he diagnosed history of right knee ACL sprain and chronic right knee pain with limited range of motion. Dr. Miller noted that appellant was totally disabled. He treated appellant on December 13, 2022 for minimal swelling to the right knee in the medial joint line. Dr. Miller diagnosed history of right knee ACL strain and chronic knee pain and noted appellant was permanently disabled from work. In a duty status report (Form CA-17) of even date, he diagnosed sprain of the super tibiofibular joint and ligament and noted that appellant was permanently disabled from work.

OWCP declared a conflict in medical opinion between Dr. Miller, appellant's treating physician, and Dr. Lester, the second opinion physician, regarding appellant's current condition and the extent of any employment-related disability.

On March 1, 2023 OWCP referred appellant, along with the case record, and a series of questions to Dr. David Broderick, a Board-certified orthopedic surgeon, for an impartial medical examination to resolve the conflict in medical opinion.

In a report dated April 20, 2023, Dr. Broderick reviewed the history of appellant's August 12, 2019 employment injury and her subsequent medical treatment. He discussed her complaints of right knee pain. Dr. Broderick related that she wears a knee brace on her right knee for stability. He noted a slight limp, no evidence of antalgic gait, negative spring sign, negative pivot-shift sign, negative McMurray sign, no laxity to varus and valgus stress, negative Lachman's sign, intact deep tendon reflexes in both extremities, normal motor strength in both extremities, normal sensation of pinprick, and no patellofemoral crepitus of the right or left knee. Dr. Broderick noted that appellant's subjective complaints outweigh the objective findings. He diagnosed chronic right knee strain and resolved ACL strain. Dr. Broderick indicated that the ACL sprain resolved and there was no current evidence of ligamentous instability, or internal derangement of the right knee. He noted that appellant underwent extensive conservative

treatment modalities. Dr. Broderick opined that the work-related condition had resolved, and future medical treatment was not required. He noted that appellant could return to her date-of-injury job as a medical supply technician. In a Form OWCP-5c, Dr. Broderick reiterated that appellant was able to perform her date-of-injury job without restrictions.

On May 5, 2023 OWCP advised appellant of its proposed termination of her wage-loss compensation and medical benefits, as the evidence of record established that she no longer had employment-related disability or residuals causally related to her accepted August 12, 2019 employment injury. It afforded her 30 days to submit additional evidence or argument if she disagreed with the proposed termination.

By decision dated June 5, 2023, OWCP terminated appellant's wage-loss compensation and medical benefits effective June 5, 2023. It found that the opinion of Dr. Broderick, the impartial medical examiner (IME), represented the special weight of the evidence and established that she no longer had disability or residuals due to her accepted August 12, 2019 employment injury.

On June 13, 2023 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on October 13, 2023.

By decision dated January 26, 2024, OWCP's hearing representative affirmed the June 5, 2023 decision, finding that the special weight of the medical evidence rested with the opinion of Dr. Broderick, the IME, and established that appellant no longer had continuing employment-related disability or residuals.

OWCP subsequently received additional evidence. On June 1, 2023 Dr. Miller treated appellant for pain in the back of the right knee. He noted swelling of the right knee in the medial joint line. Dr. Miller diagnosed history of right knee ACL strain and chronic knee pain with recent flare-up. He opined that appellant was permanently disabled from work. In a report dated January 24, 2024, Dr. Miller diagnosed right knee ACL strain/sprain and chronic right knee pain with recent flare-up. He advised that appellant's condition was permanent and stationary as of February 23, 2021, and provided permanent restrictions. Dr. Miller noted reviewing Dr. Broderick's report and disagreed with his findings. He indicated that appellant would require future medical treatment as her risk of having an injury or issues with the right knee increased. Dr. Miller stated that her accepted condition was not resolved, but she was at maximum medical improvement (MMI) and she could continue to work with restrictions.

On April 11, 2024 appellant, through counsel, requested reconsideration.

By decision dated April 19, 2024, OWCP denied modification of the January 26, 2024 decision.

## LEGAL PRECEDENT -- ISSUE 1

Once OWCP has accepted a claim and pays compensation, it bears the burden of proof to justify modification or termination of benefits.<sup>6</sup> Having determined that, an employee has a disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing either 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>

Section 8123(a) of FECA provides in pertinent part: “If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.”<sup>9</sup> In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an IME for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>10</sup>

## ANALYSIS -- ISSUE 1

The Board finds that OWCP has met its burden of proof to terminate appellant’s wage-loss compensation and medical benefits, effective June 5, 2023, as she no longer had disability or residuals causally related to her accepted August 12, 2019 employment injury.

OWCP properly determined that a conflict in medical opinion existed between Dr. Miller, appellant’s treating physician, who opined that appellant continued to have residuals and work restrictions due to her accepted August 12, 2019 employment injury, and Dr. Lester, OWCP’s second opinion physician, who found that appellant no longer suffered disability or residuals due to her accepted August 12, 2019 employment injury. In order to resolve the conflict, pursuant to Section 8123(a) of FECA, it referred her to Dr. Broderick for an impartial medical examination to resolve the conflict in medical evidence regarding whether she continued to have disability or residuals causally related to the accepted August 12, 2019 employment injury.<sup>11</sup>

In his April 20, 2023 report, Dr. Broderick found that appellant had no further residuals of her right knee ACL sprain based on the lack of objective findings on prior physical examination

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<sup>6</sup> See *N.P.*, Docket No. 19-0296 (issued July 25, 2019); *H.P.*, Docket No. 18-0851 (issued December 11, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

<sup>7</sup> *J.D.*, Docket No. 18-0958 (issued January 8, 2019); *I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

<sup>8</sup> See *D.P.*, Docket No. 18-0038 (issued January 4, 2019); *J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

<sup>9</sup> 5 U.S.C. § 8123(a).

<sup>10</sup> See *J.P.*, Docket No. 23-0075 (issued March 26, 2023); *C.M.*, Docket No. 20-1647 (issued October 5, 2021); *James P. Roberts*, 31 ECAB 1010 (1980).

<sup>11</sup> *Supra* note 9.

and historically. He diagnosed chronic right knee strain and resolved ACL strain. Dr. Broderick indicated that the ACL sprain resolved and there was no current evidence for ligamentous instability or internal derangement of the right knee. He noted that appellant underwent extensive conservative treatment modalities. Dr. Broderick opined that the work-related condition had resolved and future medical treatment was not required. He noted that appellant could return to her prior work activities as a medical supply technician. Dr. Broderick reiterated that, based on his review of the record and findings on prior examination, she had no objective evidence of her work injuries, no neurological defects, or any physical findings showing the need for further medical treatment.

Dr. Broderick based his opinion on a prior factual and medical history of detailed findings on prior examination.<sup>12</sup> He further provided a well-rationalized opinion based on a complete factual background, SOAF, a review of the record, and physical examination findings that appellant had no further residuals causally related to her accepted employment injury, explaining that findings on examination and objective studies demonstrated no continued employment-related condition that required further medical treatment.<sup>13</sup> The Board therefore finds that Dr. Broderick's opinion, as the IME, is accorded the special weight of the medical evidence and establishes that appellant no longer had disability or residuals causally related to the accepted August 12, 2019 employment injury. Accordingly, OWCP did meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective June 5, 2023.<sup>14</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

When OWCP properly terminates compensation benefits, the burden shifts to appellant to establish continuing disability or residuals on or after that date, causally related to the accepted employment injury.<sup>15</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>16</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that appellant has not met her burden of proof to establish continuing disability or residuals on or after June 5, 2023, causally related to the accepted employment injury.

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<sup>12</sup> *S.V.*, Docket No. 23-0474 (issued August 1, 2023); *J.S.*, Docket No. 20-1409 (issued September 1, 2021).

<sup>13</sup> *See J.P.*, Docket No. 23-0075 (issued March 26, 2023); *J.S.*, *id.*

<sup>14</sup> *See D.G.*, Docket No. 19-1259 (issued January 29, 2020); *see also D.T.*, Docket No. 10-2258 (issued August 1, 2011); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

<sup>15</sup> *See M.D.*, Docket No. 21-0080 (issued August 16, 2022); *C.P.*, Docket No. 21-0173 (issued March 23, 2022); *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>16</sup> *Id.*

Following OWCP's June 5, 2023 termination decision, appellant submitted a June 1, 2023 report from Dr. Miller who diagnosed history of right knee ACL strain and chronic knee pain with recent flare-up. Dr. Miller determined that appellant was permanently disabled. In a report dated January 24, 2024, he diagnosed right knee ACL strain/sprain and chronic right knee pain with recent flare-up. Dr. Miller advised that appellant's condition was permanent and stationary as of February 23, 2021, and provided permanent restrictions. He indicated that appellant would require future medical treatment. Dr. Miller stated that her accepted condition was not resolved but she was at MMI and could continue to work with restrictions. However, he was on one side of the conflict, which Dr. Broderick had resolved. The Board has held that reports from a physician who was on one side of a medical conflict are insufficient to overcome the special weight accorded to the IME, or to create a new conflict.<sup>17</sup> For these reasons, the Board finds that his opinions are insufficient to meet appellant's burden of proof.

As the medical evidence of record is insufficient to establish continuing disability or residuals on or after June 5, 2023, causally related to the accepted August 12, 2019 employment injury, the Board finds that appellant has not met her 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 OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective June 5, 2023, as she no longer had disability or residuals causally related to her accepted August 12, 2019 employment injury. The Board further finds that appellant has not met her burden of proof to establish continuing disability or residuals on or after June 5, 2023, causally related to the accepted August 12, 2019 employment injury.

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<sup>17</sup> See *C.L.*, Docket No. 18-1379 (issued February 5, 2019); *I.J.*, 59 ECAB 408 (2008).

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 19, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 27, 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