

² 5 U.S.C. § 8101 *et seq.*

had disability or residuals causally related to her accepted employment injury; and (2) whether appellant has met her burden of proof to establish continuing disability or residuals, on or after July 17, 2023, causally related to the accepted employment injury.

FACTUAL HISTORY

On January 30, 2004 appellant, then a 42-year-old claims representative, filed an occupational disease claim (Form CA-2) alleging that she developed Parvo Virus due to factors of her federal employment. She alleged that she was exposed to the virus by her coworker, who sat across from her and shared her desk and telephone while her computer was being repaired. Appellant noted that she first became aware of her condition on August 31, 2003, and realized its relation to her federal employment on January 7, 2004.³ She stopped work on January 6, 2004. OWCP developed the claim and on April 5, 2006, accepted it for Parvo Virus.⁴

In a May 15, 2021 report, Dr. Ernest B. Visconti, Board-certified in infectious disease, appellant's treating physician, indicated that appellant had persistent Parvo Virus which was found in her blood. He related that appellant had been exposed to the virus by a coworker and the chronic condition had frequent relapses that were difficult to predict. Dr. Visconti noted that the results sent with his report could be referred to for confirmation of the diagnosis. He related that appellant's condition caused irritation of the joints associated with arthritis and noted that she had swelling of the knee. Dr. Visconti opined that her arthritis symptoms were recurring and severe which made work not possible at that time. He noted that appellant related that she went to a chiropractor every week for neck and back pain. Dr. Visconti opined that due to these conditions, she was not able to work in any capacity at the current time.

On April 28, 2023, OWCP referred appellant, along with a statement of accepted facts (SOAF), the medical record, and a series of questions to Dr. Leon Sultan, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine whether appellant continued to have disability or residuals causally related to her accepted August 31, 2003 employment injury.

In a May 15, 2023 report, Dr. Sultan reviewed the medical record and the SOAF and noted that OWCP had accepted the claim for Parvo Virus. He also noted that appellant also had a past history of Lyme disease, mycoplasma infection, cervical spine myofascial pain, fibromyalgia, parathyroid operation, and borderline diabetes. Dr. Sultan related that her current complaints included swelling involving the trapezial muscles with localized pain and tightness, sometimes her right knee swelled or gave out, and she used a cane and an elastic sleeve for support. He noted that there were no complaints with regard to the left wrist. Dr. Sultan noted that his examination included appellant's cervical spine, right and left wrists, gait, and right knee. In response to

³ On the claim form, appellant noted the date that she realized her condition was employment related is listed as January 7, 2003; however, the year appears to be a typographical error, as the case record supports that she first realized her condition was employment related on January 7, 2004.

⁴ The record reflects that appellant has a prior claim under OWCP File No. xxxxxx210, with a June 12, 2003 date of injury. OWCP accepted that claim for sprain of neck; wrist sprain, left; and contusion of knee, right. It paid appellant wage-loss compensation under OWCP File No. xxxxxx210 from August 27, 2003 through September 27, 2018. OWCP has administratively combined appellant's claims with OWCP File No. xxxxxx210 serving as the master file.

OWCP's question regarding whether the Parvo Virus had resolved, he opined that, "[t]his type of virus is also known as 'Fifth's Disease.' This is a self-limiting disease and is now clinically resolved." Dr. Sultan advised that appellant was able to return to work as a claims representative with no restrictions.

By notice dated June 14, 2023, OWCP advised appellant that it proposed to terminate her wage-loss compensation and medical benefits based on Dr. Sultan's opinion that the accepted conditions had resolved without residuals. It afforded her 30 days to submit additional evidence.

On July 11, 2023, OWCP received an April 22, 2023 report from Dr. Visconti who related that appellant had been under his care since December 2003, and was treated for multiple infections, including Lyme Disease, Mycoplasma, Epstein Barr, and Parvo Virus B19. Dr. Visconti noted that appellant's previous blood work and clinical evaluations revealed a contagious condition that could be transmitted through close contact from one individual to another and that infectivity occurs prior to the development of a skin rash, which appellant has shown on a frequent basis. He related that appellant had exposure to Parvo Virus B19 when she worked in an office within a five-foot proximity to her coworker, where they shared the same telephone, bathroom, and work area, which resulted in appellant having significant exposure to the Parvo Virus B19. Dr. Visconti opined that appellant continued to have severe arthritic and chronic fatigue secondary to the virus; that she suffered from extreme pain in her knees, shoulders, muscles, and joints, making it difficult to stay mobile; and that she also experienced facial rash and swollen joints. He explained that she had seen a rheumatologist for many years and had received symptomatic treatment; however, there is no effective antiviral medication currently available to combat this virus. Dr. Visconti opined that, as her other infections have been effectively treated, appellant's symptoms were most consistent with persistent Parvo Virus. He explained that her presentation followed similar cases in the medical literature that have corroborated that Parvo Virus can cause chronic infection lasting many years in a subset of adults. Dr. Visconti opined that appellant was currently persisting with severe symptoms and was not fit to work.

By decision dated July 17, 2023, OWCP terminated appellant's wage-loss compensation and medical benefits effective that day, finding that Dr. Sultan's report was entitled to the weight of the medical evidence.

On July 24, 2023, OWCP received laboratory reports dated April 13, 2021, and May 4, 2023, which were positive for Parvo Virus. It also received a specimen from a laboratory dated November 25, 2020, which was positive for Parvo Virus.

On July 8, 2024, appellant through counsel, requested reconsideration and submitted additional evidence.

In an August 17, 2023 report, Dr. Visconti confirmed that appellant was seen and examined by him on April 22, 2023.

By decision dated July 12, 2024, OWCP denied modification of the July 17, 2023 termination decision.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of compensation benefits.⁵ After it has determined that, an employee has disability causally related to his or her federal employment, it may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.⁶ OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁷

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁸ 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.⁹

ANALYSIS -- ISSUE 1

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective July 17, 2023.

In a May 15, 2023 report, Dr. Sultan, OWCP's second opinion physician, reviewed appellant's history of injury, provided orthopedic physical examination findings, and opined that her accepted Parvo Virus condition was self-limiting and had resolved. However, he did not obtain or review any diagnostic tests to confirm whether the Parvo Virus continued. The Board finds that Dr. Sultan merely offered a conclusory opinion and did not explain, with any supporting medical rationale, why he concluded that appellant's accepted condition was self-limiting and had resolved.¹⁰ As the May 1, 2023 report of Dr. Sultan is 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.¹¹

⁵ See *R.D.*, Docket No. 22-1203 (issued November 19, 2024); *A.D.*, Docket No. 18-0497 (issued July 25, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁶ *A.G.*, Docket No. 18-0749 (issued November 7, 2018); see also *I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

⁷ *V.L.*, Docket No. 24-0739 (issued August 26, 2024); *R.R.*, Docket No. 19-0173 (issued May 2, 2019); *T.P.*, 58 ECAB 524 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

⁸ *L.W.*, Docket No. 18-1372 (issued February 27, 2019); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁹ *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *A.P.*, Docket No. 08-1822 (issued August 5, 2009).

¹⁰ See *M.F.*, Docket No. 25-0013 (issued November 14, 2024); *A.M.*, Docket No. 24-0533 (issued July 5, 2024); *C.G.*, Docket No. 23-0013 (issued April 24, 2023); *C.B.*, Docket No. 20-0629 (issued May 26, 2021); *A.G.*, Docket No. 20-0187 (issued December 31, 2020).

¹¹ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

CONCLUSION

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective July 17, 2023.

ORDER

IT IS HEREBY ORDERED THAT the July 12, 2024 decision of the Office of Workers' Compensation Programs is reversed.

Issued: January 29, 2025
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board