

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

J.C., Appellant)

and)

**DEPARTMENT OF THE INTERIOR, BUREAU
OF LAND MANAGEMENT, Vale, OR, Employer**)

**Docket No. 20-0973
Issued: February 9, 2021**

Appearances:
Stephanie Leet, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 1, 2020 appellant, through counsel, filed a timely appeal from an October 24, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

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 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the October 24, 2019 decision, OWCP received additional evidence. 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.*

ISSUES

The issues are: (1) whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation, effective March 4, 2018, as he no longer had residuals or disability causally related to his accepted August 19, 2000 employment injury; and (2) whether appellant has met his burden of proof to establish continuing residuals or disability causally related to his accepted left wrist injury on or after March 4, 2018.

FACTUAL HISTORY

On August 19, 2000 appellant, then a 59-year-old emergency firefighter, filed a traumatic injury claim (Form CA-1) alleging that on August 17, 2000 he tripped when walking a dozer line and fell on his left hand, sustaining an injury to his left wrist while in the performance of duty. He stopped work on August 17, 2000. OWCP accepted the claim for a left wrist ligament strain necessitating open reduction and repair of the scapholunate ligament and paid appellant wage-loss compensation for temporary total disability commencing October 4, 2000. It subsequently expanded its acceptance of the claim to include a left triquetral fracture with open reduction and repair.

On December 19, 2000 appellant underwent authorized surgical repair of the left scapholunate ligament, performed by Dr. T. Clark Robinson, a Board-certified orthopedic surgeon. He continued under medical care. Appellant remained off work. OWCP paid him wage-loss compensation for temporary total disability on the periodic rolls commencing April 22, 2001.

In a December 16, 2010 report, Dr. Robinson noted that appellant continued to experience pain and instability of the left wrist. He diagnosed primary localized arthritis of the left forearm and other joint derangement of the left forearm.

On March 26, 2015 OWCP expanded its acceptance of the claim to include post-traumatic arthritis of the left wrist.

On April 7, 2015 appellant underwent authorized left scaphoid excision with mid carpal fusion, performed by Dr. Robinson. In a July 16, 2015 report, Dr. Robinson released appellant to full activity, but restricted lifting to 25 pounds. He explained that appellant could not return to his date-of-injury position as a firefighter "due to his age and not his wrist."

On September 14, 2015 OWCP referred appellant, the medical record, a statement of accepted facts (SOAF), and a list of questions to Dr. Paul Collins, a Board-certified orthopedic surgeon, for a second opinion regarding the nature and extent of appellant's accepted left wrist condition. The SOAF indicated appellant's date-of-injury position as an emergency firefighter required arduous physical activity over extended periods of time, including lifting more than 50 pounds.

Dr. Collins submitted a September 30, 2015 report in which he reviewed the medical record and SOAF. He noted that appellant continued to experience left wrist pain. On examination of the left upper extremity Dr. Collins further noted a surgical scar in the dorsal aspect of the wrist, diminished grip strength, and restricted wrist motion in all planes. He diagnosed traumatic left wrist scapholunate junction subluxation with degenerative changes from the accepted August 17,

2000 incident, and postoperative changes from scapholunate and wrist fusion. Dr. Collins opined that the accepted injury had resulted in progressive degenerative arthritis of the left wrist, postoperative alteration of the left wrist and left forearm and wrist weakness related to traumatic damage to the left scapholunate junction. He permanently restricted appellant to sedentary duty. Dr. Collins explained that he did not believe appellant's work status would change over time given the severity of the accepted injury and subsequent treatment.

In a November 14, 2017 development letter, OWCP requested that Dr. Robinson submit a more current report regarding current clinical findings, diagnoses, and appellant's work capacity. In response, Dr. Robinson submitted a December 14, 2017 report, noting appellant's symptoms of left wrist pain and stiffness. On examination of the left hand and wrist, he observed no tenderness to palpation, 20 degrees wrist flexion, 55 degrees wrist extension, 10 degrees ulnar deviation, 10 degrees radial deviation, full forearm rotation, normal strength, and normal sensation. Dr. Robinson obtained x-rays of the left wrist demonstrating a scaphoid excision and mid carpal fusion with two screws in place. He diagnosed primary osteoarthritis of the left hand, scaphoid excision, and partial wrist fusion. Dr. Robinson opined that appellant's left wrist fusion had healed without residual symptoms and that he had no work restrictions related to his wrist. He found appellant permanently disabled from his date-of-injury position as a firefighter due to his age of 77 years, with no restrictions attributable to his left wrist condition.

In a January 18, 2018 notice, OWCP advised appellant that it proposed to terminate his wage-loss compensation as he no longer had residuals of disability causally related to his accepted August 17, 2000 employment injury. It indicated that the weight of the medical opinion evidence with respect to employment-related residuals/disability rested with the December 14, 2017 opinion of Dr. Robinson. OWCP afforded appellant 30 days to submit evidence and argument challenging the proposed termination action.⁴

By decision dated March 1, 2018, OWCP terminated appellant's wage-loss compensation, effective March 4, 2018, as he no longer had disability causally related to his accepted August 17, 2000 employment injury. It found that the weight of the medical opinion evidence with respect to employment-related residuals/disability rested with the December 14, 2017 opinion of Dr. Robinson. OWCP noted that the claim remained open for medical benefits.

On March 23, 2018 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. In a September 7, 2018 statement, he contended, through counsel, that Dr. Robinson's February 14, 2017 opinion was insufficiently rationalized to represent the weight of the medical evidence.

Appellant also submitted an August 21, 2018 report by Dr. Robert G. Hansen, a Board-certified orthopedic surgeon. Dr. Hansen noted a history of injury and treatment. On examination he found mild swelling over the left wrist, pain to palpation, decreased sensation in the little and ring fingers, and a positive Tinel's sign at the left elbow. Dr. Hansen obtained x-rays which

⁴ In response, appellant provided a statement from S.R., an associate of appellant's, contending that appellant did not understand why Dr. Robinson had suddenly changed his opinion after asserting for many years that appellant could no longer work as a firefighter. He continued to experience left wrist pain and had to take medication frequently.

demonstrated left intercarpal fusion, scaphoid excision, and significant arthrosis of the radial lunate joint.

By decision dated October 25, 2018, an OWCP hearing representative affirmed the March 1, 2018 decision, finding that Dr. Robinson's December 14, 2017 opinion continued to represent the weight of the medical evidence.

On October 11, 2019 appellant, through counsel, requested reconsideration. Counsel contended that OWCP had not met its burden of proof to terminate appellant's wage-loss compensation as Dr. Robinson's December 14, 2017 opinion was inconsistent with his prior reports and contained no rationale explaining his change of opinion. Appellant submitted additional evidence.⁵

In a July 22, 2019 report, Dr. Jonathan Bowman, a Board-certified family practitioner, reviewed a history of injury and treatment. He diagnosed post-traumatic arthritis of the left wrist and noted permanent work restrictions against reaching above the shoulder, pushing, pulling, lifting, and carrying more than 10 pounds, no repetitive reaching, and no repetitive wrist movements. Dr. Bowman opined that the accepted left wrist injury and post-traumatic arthritis of the left wrist prevented appellant from returning to his date-of-injury position as a firefighter.

By decision dated October 24, 2019, OWCP denied modification of the March 1, 2018 decision, finding that Dr. Robinson's December 14, 2017 opinion continued to represent the weight of the medical evidence.

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.⁶ After it has been 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.⁷ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁸

ANALYSIS

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation, effective March 4, 2018.

In his December 14, 2017 report, Dr. Robinson discussed appellant's history of medical treatment and reported his continuing symptoms of left wrist pain and stiffness. He detailed the

⁵ Appellant also submitted chart notes signed by Troy Landes, a physician assistant.

⁶ *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).

⁷ *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).

⁸ *See R.P., id.*; *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

physical examination findings, which included restricted motion in all planes. Dr. Robinson diagnosed primary osteoarthritis of the left hand and postsurgical status. He opined that appellant was disabled from his date-of-injury position as a firefighter due to appellant's age of 77 years, with no restrictions or limitations referable to the employment injury. Dr. Robinson opined that the wrist fusion had healed, however, he did not address whether the accepted condition of primary osteoarthritis had resolved. The absence of medical rationale on the crucial issue of continuing residuals/disability from work significantly diminishes the probative value of Dr. Robinson's opinion.⁹

The Board further finds that, in his December 14, 2017 report, Dr. Robinson noted both that appellant reported continued left wrist pain and stiffness and that appellant had no left wrist symptoms. The Board has held that a medical opinion which is equivocal in nature is of limited probative value regarding a given medical question.¹⁰

As Dr. Robinson does not provide a well-rationalized, unequivocal opinion that appellant had no residuals or disability related to the accepted August 17, 2000 employment injury on or after March 4, 2018,¹¹ OWCP has not met its burden of proof to terminate appellant's wage-loss compensation, effective March 4, 2018, based on his report.

CONCLUSION

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation, effective March 4, 2018.¹²

⁹ *M.R.*, Docket No. 20-0707 (issued November 30, 2020).

¹⁰ *See E.B.*, Docket No. 18-1060 (issued November 1, 2018); *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962).

¹¹ *See supra* note 8.

¹² In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the October 24, 2019 decision of the Office of Workers' Compensation Programs is reversed.

Issued: February 9, 2021
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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