United States Department of Labor
Employees' Compensation Appeals Board

A.D., Appellant	)	
and	)	**Docket No. 10-2286**
	)	**Issued: September 27, 2011**
U.S. POSTAL SERVICE, MARINERS HARBOR POST OFFICE, Staten Island, NY, Employer	)	

Appearances:
James D. Muirhead, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 13, 2010 appellant, through his attorney, filed a timely appeal from a July 20, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) affirming the termination of his compensation benefits on November 24, 2009. Pursuant to the Federal Employees' Compensation Act (FECA),[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUES

The issues are: (1) whether OWCP properly terminated appellant's compensation for wage-loss and medical benefits effective November 24, 2009; and (2) whether appellant had any continuing employment-related residuals or disability after November 24, 2009.

On appeal appellant, through his attorney, contends that OWCP failed to accept a lumbar herniated disc for which surgery was performed on April 27, 2010.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On April 8, 2008 appellant, then a 51-year-old letter carrier, sustained injury when his postal vehicle was rear-ended while on his postal route. He stopped work that day. On May 16, 2008 OWCP accepted appellant's claim for sprains of the neck and right upper extremity. On August 28, 2008 it accepted sprains of the right infraspinatus, supraspinatus and subscapularis muscle regions. Appellant underwent a right shoulder arthroscopy on September 24, 2008. He returned to work at full-time limited duty on January 24, 2009, with restrictions on lifting, pushing, or pulling not to exceed 20 pounds for five to five and one-half hours a day and driving a motor vehicle from four to five and one-half hours a day. Appellant stopped work on January 31, 2009 and claimed numbness and weakness in his arm and shoulder while performing the activities of his employment. OWCP accepted an aggravation and exacerbation of a preexisting cervical sprain and strain. Appellant did not return to work.

The record reflects that on August 5, 2005, prior to his injuries, appellant underwent a magnetic resonance imaging (MRI) scan of the lumbar spine. Dr. Jason Hodges, a Board-certified radiologist, diagnosed an asymmetric L3-4 diffuse bulging annulus, greater towards the left than the right, with moderate bilateral neural foraminal narrowing and a small left paracentral focal disc herniation. The L4-5 disc space demonstrated a diffuse bulging annulus, also greater towards the left side than the right. There was bilateral neural foraminal narrowing left greater than right with mild spinal stenosis.

Appellant underwent an MRI scan of the cervical spine on May 19, 2008 which was interpreted by Dr. Eliezer Offenbacher, a Board-certified radiologist, as showing straightening of the cervical lordosis; spondylosis most notable from C4-5 through C6-7 with anterior and posterior disc osteophyte complexes and mild impingement at the C6-7 level; and a right paracentral disc herniation at the T1-2 level, deforming the thecal sac. Degenerative end-plate changes were notable at C4-5 and C5-6 as well as small Schmorl's node indenting the superior margin of C6.

On September 24, 2008 appellant underwent an arthroscopy of the right shoulder, with subacromial synovectomy, bursectomy, acromioplasty, excision of coracoacromial (CA) ligament and shaving of a partial tear of the cuff.

In an April 17, 2009 treatment note, Dr. Igor Stiler, an attending Board-certified neurosurgeon, stated that appellant was seen in follow-up and that a mass found on the lumbar MRI scan was thought to be a neural fibroma, "may be a fragment of the disc secondary to trauma." He noted appellant was referred to Dr. DiGiacinto for consultation. Dr. Stiler advised that appellant still experienced low back pain and listed findings on examination. He requested authorization for pain management. In an April 21, 2009 attending physician's report, Dr. Stiler stated that appellant had lumbar and cervical radiculopathy. He checked a box indicating that these conditions were caused or aggravated by an employment activity. Dr. Stiler found appellant totally disabled for work.

On March 31, 2009 OWCP referred appellant to Dr. Sanford Wert, a Board-certified orthopedic surgeon, for a second opinion examination. Dr. Wert was requested to address

whether appellant had any conditions or residuals other than the accepted conditions and whether he had the capacity to return to work.

In an April 21, 2009 report, Dr. Wert reviewed the history of appellant's April 8, 2008 motor vehicle injury and the accepted claim from 2009, after appellant returned to work. He reviewed the medical treatment records and diagnostic studies and listed findings on physical examination. Dr. Wert noted that an MRI scan of the lumbosacral spine from 2005, obtained prior to the accepted injuries, showed L3-4 diffuse bulging with mild dextroscoliosis and diffuse desiccation of the spine. On examination of the cervical spine, no tenderness was found to palpation and appellant had voluntary restriction in movement. The right shoulder showed no tenderness to deep palpation, but he complained of pain on range of motion. The impingement sign was negative as were the rotator test, Neer sign and Hawkins test. There was no atrophy. Dr. Wert diagnosed aggravation of preexisting osteoarthritis of the cervical spine, sprain of the cervical spine and right shoulder and status post arthroscopy of the right shoulder.

Dr. Wert stated that, based on the clinical evaluation, appellant had a mild partial disability and should limit lifting, carrying, pushing and pulling to 25 pounds or less and refrain from overhead reaching with his right upper extremity. The x-ray report of the cervical spine dated April 19, 2008, performed 11 days after the accident, revealed lower cervical spine degenerative disease that predated the accident; and the MRI scan of the cervical spine dated May 19, 2008, performed 1 month and 11 days after the accident, revealed disc desiccation that was in an early phase of degeneration and did not imply recent trauma. Dr. Wert concluded that appellant sustained an aggravation of preexisting osteoarthritis with respect to the cervical spine. The medical evidence did not establish any other or additional injuries due to factors of his employment. Based on the available information and the physical examination, there was no need for physical therapy. Appellant was capable of returning to light-duty work subject to the specified restrictions. In a May 8, 2009 addendum, Dr. Wirt reviewed materials related to the right shoulder surgery and reiterated that appellant's capacity for work remained unchanged.

In a May 29, 2009 report, Dr. Stiler noted that appellant complained of spasms in his cervical spine on the right side as well as the low back. He stated that, if appellant made a sudden rotational movement to the right, he developed severe pain and burning sensations through the neck and shoulder. Dr. Stiler also had pain across the lower lumbar region with numbness in the right leg. He reiterated that appellant was totally disabled.

In a June 22, 2009 report, Dr. George V. DiGiacinto, a Board-certified neurosurgeon, advised OWCP that he saw appellant at the request of Dr. Stiler. Appellant related several injuries at work, including a lumbar herniated disc in 2005 that had resolved. Dr. DiGiacinto provided the results of clinical examination and noted appellant was symptomatic from lumbar disc pathology at L2-3 on the right, herniated over L2. He stated that appellant's injury in January 2009 represented "an exacerbation of prior problems and prior injuries" while working as a postal worker. Dr. DiGiacinto advised that appellant was a candidate for a lumbar discectomy at L2-3.[2]

[2] In an August 5, 2009 addendum, Dr. DiGiacinto corrected an error in his original report which had characterized the MRI scan as showing a disc fragment at L4-5, when he meant L2-3.

In treatment notes of July 10 and September 2, 2009, Dr. Stiler advised that appellant remained totally disabled from work with a guarded prognosis.

OWCP found a conflict in medical opinion between Dr. Stiler for appellant, who supported total disability due to residuals of the accepted cervical and right shoulder conditions, and Dr. Wert, for the government, who found that he had the capacity for light-duty work subject to physical restrictions. The record reflects that appellant's claim number was placed in the medical management system which listed his zip code on Staten Island. Upon entry of the nature of examination as "referee" and the area of medical specialty as "orthopedic surgery," no physician was found within the home zip code upon initial search. The search was expanded to a radius of 10 miles, from which a doctor count of 17 physicians was derived practicing from 6.23 to 9.86 miles in the surrounding vicinity. The first listed zip code corresponded to that of Dr. Michael Bercik, a Board-certified orthopedic surgeon, in Elizabeth, New Jersey.[3] OWCP scheduled an appointment with Dr. Bercik for examination of appellant on September 28, 2009.[4] Dr. Bercik was asked to address whether the accepted cervical and right shoulder conditions were still active and disabling; whether appellant had sustained a lumbar condition due to his employment; and whether he was able to perform his date-of-injury job or to provide current work restrictions.

In a report dated September 28, 2009, Dr. Bercik reviewed a history of appellant's injury on April 8, 2008, following which diagnostic tests were obtained of the cervical spine which showed no fracture or bony injury. He reviewed appellant's treatment by Dr. Stiler and noted additional diagnostic studies of the cervical spine were obtained which showed osteophytes at C4-5, C5-6 and C6-7 and a T1-2 disc herniation. Appellant was off work from April 8, 2008 to January 24, 2009, when he returned to limited duty. He stopped again on January 31, 2009, due to increased pain in the neck, shoulder and low back. With regard to treatment in February 2009, the records of Dr. Stiler listed complaint related to the cervical spine. A lumbar MRI scan was performed on February 17, 2009 that noted a mass identified as a probable neurofibroma. A subsequent MRI scan of March 2, 2009 with contrast noted a disc herniation at L2-3. Appellant was seen on neurological consultation by Dr. DiGiacinto, who noted appellant was a candidate for a lumbar discectomy. As to the right shoulder, an MRI scan was performed on August 13, 2008, that showed a partial tear of the rotator cuff with degenerative changes for which surgery was performed on September 24, 2008.

On clinical examination, Dr. Bercik noted that appellant complained of posterior pain in the neck with numbness that radiated through the left arm. Appellant described low back pain that radiated to the right leg, the symptoms of which were more severe than in the neck. As to the right shoulder, appellant described decreased strength and pain that would come and go. Dr. Bercik noted that the medical record documented a prior low back injury in 2005. The diagnostic studies of August 5, 2005 noted mild diffuse bulging with mild bilateral foraminal narrow and disc bulging at L3-4 and L4-5. Examination of the cervical and thoracic spine was reported with normal alignment, no deformity or swelling. Right and left Spurling tests were

[3] The screen pertaining to Dr. Bercik listed the dates he was added to the directory, the last referee examination, total referee referrals and date of last bypass.

[4] OWCP provided Dr. Bercik with a statement of accepted facts and list of questions.

negative. There was reported tenderness on palpation of the paravertebral musculature. Neurologic examination of the upper extremities was reported normal for muscle strength of both arms with no sensory dyesthesias or abnormal sensation. The lumbosacral spine revealed normal alignment and palpation elicited no muscle spasms. Appellant noted subjective tenderness on palpation. Neurological examination revealed normal reflexes and muscle strength with right and left straight-leg raising and Babinski tests reported negative. Appellant reported mild pain in the right anterior thigh. The right shoulder revealed no swelling or deformity with arthroscopic portal scars noted. Impingement testing was negative with no tenderness on palpation of the greater tuberosity or the acromioclavicular (AC) joint.

Dr. Bercik diagnosed appellant as postcervical sprain, postlumbosacral sprain and postright shoulder rotator cuff tear. He stated that appellant had reached maximum medical improvement as to the cervical sprain sustained on April 8, 2008. Objectively, there were no findings on examination to correlate with appellant's subjective complaints. Dr. Bercik advised that no further diagnostic study or treatment of the cervical spine was necessary and that appellant did not sustain any permanent injury. With regard to the lumbar spine, there was no documentation that appellant sustained an injury to the low back on April 8, 2008 and that causal relationship was not established. As to any lumbar sprain sustained during the work activities January 24 to 31, 2009 by history, there were no objective clinical findings correlating to appellant's present complaints. Dr. Bercik advised that no additional treatment or testing was necessary, including the lumbar disc excision at L2-3, due to residuals of the accepted condition. The right shoulder revealed minimal objective findings. Dr. Bercik stated that appellant achieved a good result following surgery and had a mild degree of permanent impairment to the right shoulder. He advised in a work restriction evaluation form that appellant had the capacity to return to work in his date-of-injury position without limitations.

In an October 5, 2009 report, Dr. DiGiacinto stated that appellant's disc herniation at L2-3 on the right was related to the January 31, 2009 injury. He advised that appellant remained totally disabled.

In an October 20, 2009 letter, OWCP proposed terminating appellant's compensation benefits based on the opinion of the impartial medical specialist.

In an October 28, 2009 report, Dr. Stiler stated that, based on the history and the examinations from May 2, 2008 through October 9, 2009, appellant had traumatic cervical radiculopathy with a T1-2 herniated disc; traumatic derangement of the shoulders with a rotator cuff tear that required surgery; and chronic traumatic lumbar radiculopathy with exacerbation and herniated disc at L2-3 with extruded disc fragment. He attributed appellant's condition to a combination of the injury sustained on April 8, 2008, a prior lumbar injury which was work related and the course of his work in 2009. Appellant was totally disabled from work and his prognosis was poor as he required lumbar surgery. Dr. Stiler stated that appellant could not perform any work activities.

In a November 11, 2009 report, Dr. DiGiacinto noted that appellant sustained a low back injury in 2005 which consisted of a herniated lumbar disc. Appellant was injured again in August 2008, at which time a parked truck in which he was seated was rear-ended and he was thrown forward. Dr. DiGiacinto stated that the January 31, 2009 work stoppage was due to an

exacerbation of the prior injuries while working as a postal worker. He noted that appellant sustained a new disc herniation not seen on the earlier MRI scan and was a candidate for lumbar discectomy surgery at L2-3 on the right. Dr. DiGiacinto reiterated that appellant was totally disabled due to pain directly related to the lumbar disc herniation.

In a November 24, 2009 decision, OWCP terminated appellant's monetary compensation and medical benefits effective that date. It found that the weight of medical opinion was represented by Dr. Bercik, the impartial medical specialist.

On December 23, 2009 appellant requested an oral hearing.

On April 27, 2010 appellant underwent an L2-3 discectomy and hemilaminotomy on the right side. The surgical report of Dr. DiGiacinto noted that the L3 nerve root was compressed by a combination of facet hypertrophy as well as a significant disc herniation. Dr. DiGiacinto removed a disc fragment in the canal over the L2 body.

At the June 3, 2010 hearing, appellant testified that he retired from the employing establishment on disability. He described pain associated with turning his neck to the right and the right shoulder surgery. Appellant noted that, at the time of the January 31, 2009 recurrence, he was performing his regular job duties. Counsel contended that the lumbar back condition related to January 2009. He noted that the physician selection process might be flawed as appellant lived on Staten Island but was sent to Elizabeth, New Jersey for examination by Dr. Bercik. Counsel also contended that the impartial examiner's opinion was flawed and contradicted by the fact that appellant had lumbar surgery and a disc fragment was removed. He asked that the termination be reversed and the case be accepted for injury to the lumbosacral spine.

By decision dated July 20, 2010, an OWCP hearing representative affirmed the November 24, 2009 termination of benefits.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.[5] After it has determined that an employee has disability causally related to his federal employment, OWCP may not terminate compensation without establishing 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.[8] To terminate authorization for medical treatment, OWCP must

[5] *S.F.*, 59 ECAB 642 (2008); *Kelly Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003)

[6] *I.J.*, 59 ECAB 524 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

[7] *J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988)

[8] *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.[9]

Under FECA, Congress has provided that, when there is disagreement between the physician on the part of the United States and that of the employee, "the Secretary shall appoint a third physician who shall make an examination."[10] The Board has noted that the appointment of a referee physician under this section is mandatory in cases where there is such disagreement and that failure of OWCP to properly appoint a medical referee may constitute reversible error.[11]

Under section 8123(a), the Board has recognized the discretion of the Director in appointing physicians to examine claimants under FECA in the adjudication of claims.[12] FECA does not specify how the appointment of a medical referee is to be accomplished. The implementing federal regulations, citing to the Board's decision in *James P. Roberts*, provide that development of the claim is appropriate when a conflict arises between medical opinions of virtually equal weight.[13] The regulations state:

> "If a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an OWCP medical adviser or consultant, OWCP shall appoint a third physician to make an examination (see § 10.502). This is called a referee examination. OWCP will select a physician who is qualified in the appropriate specialty and who has had no prior connection with the case…."[14]

ANALYSIS -- ISSUE 1

Appellant sustained injury on April 8, 2008 when his postal vehicle was rear-ended. OWCP accepted sprains of the neck and right shoulder, and of the infraspinatus, supraspinatus and subcapularis muscular regions of the upper extremity. It also accepted that appellant

---

[9] *Kathryn E. Demarsh, supra* note 5; *James F. Weikel*, 54 ECAB 660 (2003).

[10] 5 U.S.C. § 8123(a). In *Melvina Jackson*, 38 ECAB 443 (1987), the Board addressed the legislative history of section 8123 in terms of a challenge to whether an OWCP medical adviser's opinion could create a conflict in medical evidence. The Board noted that all provisions of section 8123(a) had been contained in FECA since its original enactment in 1916. *See* Act of September 7, 1916, 39 Stat. 743. However, the last sentence of section 8123(a) pertaining to appointment of a third physician where disagreement exists between the employee's physician and the physician for the United States was found in a separate section of FECA, originally, section 22, later codified unchanged as 5 U.S.C. § 771. This section was incorporated into the current section 8123(a) as part of the general codification of Title 5 of the United States Codes in 1966. *See* Act of September 6, 1966, 80 Stat. 378. The legislative intent in enacting the codification of Title 5 was "to restate, without substantive change, the laws replaced" by the codification. *See* *Melvina Jackson* at 447.

[11] *Tony F. Chilefone*, 3 ECAB 67 (1949).

[12] *See William C. Gregory*, 4 ECAB 6 (1950).

[13] 20 C.F.R. § 10.321(a); *James P. Roberts*, 31 ECAB 1010 (1980).

[14] 20 C.F.R. § 10.321(b). OWCP will pay for second opinion and referee medical examinations, reimbursing the employee all necessary and reasonable expenses incidental to such examination. 20 C.F.R. § 10.322.

sustained a recurrence of disability following his return to work for a week in January 2009. OWCP accepted an aggravation or exacerbation of the preexisting cervical sprain and strain.

Dr. Stiler, an attending physician, found that appellant was totally disabled for work due to residuals of his accepted conditions. He also diagnosed a fragment of a herniated lumbar disc at L2-3 that he attributed to appellant's injury and work activities. OWCP referred appellant for a second opinion examination by Dr. Wert, who reviewed a history of the employment injury and appellant's return to work. Based on his examination, Dr. Wert found a mild partial disability that limited appellant in lifting, carrying, pushing or pulling of 25 pounds or less and no overhead lifting with the right arm. He advised that appellant had preexisting degenerative disease and that the diagnostic studies did not reveal that it was due to trauma. Dr. Wert found appellant could return to light-duty work with restrictions.

In order to resolve the conflict in medical opinion, OWCP referred appellant to Dr. Bercik.

Dr. Bercik diagnosed appellant's condition as postcervical sprain, postlumbosacral sprain, and postright shoulder partial tear rotator cuff, with impingement syndrome. He opined that appellant had reached maximum medical improvement and that no further diagnostic studies or treatment was medically necessary. As to the lumbar spine, Dr. Bercik stated that there was no documentation that appellant sustained a low back injury on April 8, 2008 and causal relationship was not established. By history, appellant related his low back symptoms to work activities from January 24 to 31, 2009 which, if accurate, was a questionable lumbosacral sprain; but examination of the lumbosacral spine was normal with no deformity or swelling, no muscle spasm and normal muscle strength. Dr. Bercik found that further treatment, including a requested lumbar disc excision at L2-3, was not medically necessary and that appellant sustained no permanent impairment as a result of any injury to the lumbar spine. With regard to the right shoulder, he noted that, although appellant had subjective complaints, there were minimal findings on examination. Dr. Bercik stated that appellant sustained a mild degree of permanent physical impairment as a result of the injury to her right shoulder. He related the injury to the cervical spine and right shoulder to the work injury of April 8, 2008. Dr. Bercik advised that appellant could resume his regular activities of daily living and return to his usual work without restriction. He concluded that appellant's disability related to the April 8, 2008 injury and the January 2009 exacerbation had ceased and that he needed no further medical treatment. The Board finds that the report of the impartial medical specialist is well rationalized and entitled to the special weight of medical opinion. Based on Dr. Bercik's report, OWCP properly terminated appellant's compensation benefits.

At the hearing below, counsel questioned whether Dr. Bercik was properly selected as the impartial specialist. He noted that appellant lived on Staten Island, New York while Dr. Bercik was located in Elizabeth, New Jersey. The record reflects that in selecting the impartial medical specialist, OWCP entered appellant's claim number into the medical management system which listed his zip code. An initial search of the zip code found no orthopedic physicians who performed impartial referee examinations. The search was expanded to a radius of 10 miles, which returned a listing of 17 physicians identified by location from 6.23 to 9.86 miles from appellant in surrounding zip codes within the New York metropolitan area. The physician located closest to appellant's zip code, Dr. Bercik of Elizabeth, New Jersey, was selected to

perform the referee examination. The selection process was documented for the record through a series of screen captures. The Board finds that this evidence reflects that the medical scheduler properly applied OWCP medical management software to make the impartial medical selection.

Counsel also contended that OWCP should accept appellant's L2-3 disc condition, for which surgery was performed. As noted, OWCP accepted appellant's 2008 claim for sprains to his cervical spine and muscles involving his right shoulder and, in 2009, for exacerbation of his preexisting cervical sprain and strain; it did not accept appellant's claim for a herniated lumbar disc.

An August 5, 2005 MRI scan, taken prior to appellant's April 8, 2008 work injury, noted the lumbar spine evidenced an L3-4 diffuse bulging annulus with mild spinal stenosis, and a L4-5 diffuse bulging annulus and bilateral neural foraminal narrowing. Dr. Stiler, in an April 17, 2009 report, opined that appellant's latest MRI scan showed a fragment of disc secondary to trauma and later determined that appellant had a herniated disc at L2-3. Dr. Wert examined appellant and advised that the medical examination did not establish that appellant had sustained conditions other than the strains accepted by OWCP. This conflict was resolved by Dr. Bercik. Dr. Bercik found that appellant had no lumbar disability and that the proposed lumbar disc excision at L2-3 was not made medically necessary due to the accepted cervical and shoulder conditions arising from the 2008 or 2009 accepted injuries.

LEGAL PRECEDENT -- ISSUE 2

Following the proper termination of benefits, a claimant has the burden to establish continuing employment-related residuals and/or disability with probative medical evidence.[15] The medical evidence required to establish a causal relationship, generally, is rationalized medical evidence. Rationalized medical evidence is medical evidence, which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicate factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[16]

ANALYSIS -- ISSUE 2

Appellant did not establish that he had disability or residuals due to his accepted conditions after November 24, 2009.

Appellant submitted a copy of the April 27, 2010 surgical report of Dr. DiGiacinto, who advised that a lumbar discectomy and hemilaminotomy was performed at L2-3. The L3 nerve root was found compressed and the physician removed a fragment from the L2 disc region. Dr. DiGiacinto, however, did not provide any additional medical rationale addressing the issue of

[15] *V.S.*, Docket No. 09-2308 (issued September 1, 2010); *Talmadge Miller*, 47 ECAB 673 (1996).

[16] *Joe L. Wilkerson*, 47 ECAB 604 (1996); *Alberta S. Williamson*, 47 ECAB 569 (1996).

causal relationship of appellant's lumbar condition to his federal employment. This report is not relevant to the issue of continuing residuals or disability related to the accepted cervical and right upper extremity conditions. As noted, OWCP accepted the 2008 and 2009 claims for cervical and right shoulder conditions. The Board notes that appellant worked from January 24 through 31, 2009 with restrictions of no lifting/pushing/pulling of over 20 pounds. There is insufficient rationalized medical explanation as to how his 2008 injury or the limited duties for this time period caused or contributed to the lumbar disc herniation or fragments which were removed by Dr. DiGiacinto. The record does not establish residuals or disability from the accepted conditions.

CONCLUSION

The Board finds that OWCP properly terminated appellant's compensation benefits effective November 24, 2009. The Board further finds that appellant has not established that he sustained a lumbar herniated disc due to his accepted injuries or any employment-related residuals or disability after that date.

ORDER

IT IS HEREBY ORDERED THAT the July 20, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 27, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board