United States Department of Labor
Employees' Compensation Appeals Board

W.H., Appellant	)	
and	)	**Docket No. 14-1153**
	)	**Issued: December 3, 2014**
U.S. POSTAL SERVICE, POST OFFICE, Tampa, FL, Employer	)	

Appearances:
William Hackney, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 21, 2014 appellant, through his attorney, filed a timely appeal from a December 17, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 OWCP met its burden of proof to terminate appellant's medical and wage-loss compensation effective December 17, 2013 as he had no residuals or disability causally related to his accepted February 4, 2008 work-related injuries.

FACTUAL HISTORY

OWCP accepted that on February 4, 2008 appellant, then a 55-year-old rural carrier, sustained sprains of the neck and the thoracic region of the back and fractures of the right patella, sternum and left phalanges of the foot due to a motor vehicle accident. On May 27, 2009 it

[1] 5 U.S.C. § 8101 *et seq.*

expanded his claim to accept dislocation and internal derangement of the right shoulder. Appellant stopped work on February 5, 2008 and has not returned to work. OWCP placed him on the periodic rolls for compensation payment on August 3, 2011.

On June 26, 2008 Dr. John G. Sullivan, an attending Board-certified orthopedic surgeon, performed a right knee arthroscopy with anterior synovectomy and a partial medial meniscectomy of the right knee. On February 26, 2009 Dr. Barbara A. Van Winkle, a Board-certified orthopedic surgeon, performed a right shoulder superior labral tear from anterior to posterior (SLAP) arthroscopic repair, an arthroscopic synovectomy and an arthroscopic Bankart repair. The latter procedures were authorized by OWCP.

In order to obtain additional information about appellant's work-related condition and ability to work, OWCP referred him to Dr. William Dinenberg, a Board-certified orthopedic surgeon. In a September 18, 2009 report, Dr. Dinenberg determined that appellant's left phalanges and sternum injuries had resolved, but that he had continued status post chondral damage to the undersurface of the right patella, medial femoral condyle, meniscus tear and continued cervical sprain. He found that appellant was capable of performing work with the physical limitations of no overhead motion with the right upper extremity and no lifting greater than 20 pounds. Dr. Dinenberg recommended that appellant should engage primarily in sitting duties and avoid bending, stooping, squatting, kneeling or climbing. He stated that appellant had reached maximum medical improvement regarding his right knee, left foot fractures and sternal fractures, but that he had not reached maximum medical improvement regarding his cervical spine or right shoulder.

OWCP referred him to a rehabilitation counselor, but the employing establishment was unable to offer a position within his sedentary restrictions. In a report dated December 24, 2009, a vocational evaluator found that no transferable skills existed, that an on-the-job training program was unlikely to return appellant to substantial gainful employment and that no jobs or vocational trainings programs were recommended because appellant was not employable. He explained that appellant's age, the severity of his medical conditions and the lack of transferable skills would have a profound impact on his ability to find work.

OWCP referred appellant for another second opinion evaluation with Dr. Dinenberg on March 10, 2010. In his April 9, 2010 report, Dr. Dinenberg determined that appellant's sternal fracture, fractures of the left toe and right patella fracture had resolved without residuals, whereas the chondral damage to the patella, medial femoral condyle, medial meniscal tear of the right knee, cervical sprain, labral tear, Bankart tear and adhesive capsulitis of the right shoulder continued to have residuals. He found that appellant was capable of performing work with the same limitations outlined in his previous report and indicated that these work restrictions would be permanent. Dr. Dinenberg noted that appellant had reached maximum medical improvement from all of his injuries.

In a diagnostic report dated May 19, 2010, Dr. Mark J. Timken, a Board-certified radiologist, examined the results of a computerized tomography (CT) scan of appellant's right shoulder. He noted degenerative changes of the acromioclavicular (AC) joint, but found the results unremarkable of the right shoulder. Dr. Timken also examined the results of CT scans of appellant's left shoulder, left knee, right knee, pelvis cervical spine, lumbar spine and thoracic spine. The results for appellant's left shoulder and thoracic spine were unremarkable. The results for his left knee indicated bilateral vascular calcifications, but an otherwise unremarkable

CT scan. A CT scan of appellant's pelvis revealed phleboliths, but was otherwise unremarkable. The results for his cervical spine indicated a polyp or retention cyst in the posterior inferior aspect of the left maxillary sinus and facet arthropathy at C7-T1. A CT scan of appellant's lumbar spine indicated degenerative changes in the left sacroiliac joint, disc bulges at L5-S1, L4-5, L3-4, L2-3 and L1-2, with underlying lumbar spondylosis.

On June 8, 2010 Dr. William Neese, a Board-certified osteopath, reviewed Dr. Timken's reports and assessed appellant with chronic right shoulder pain at the AC joint, cervical sprain and strain, lumbar sprain and strain and multiple disc bulges in the lumbar spine. Appellant continued to submit follow-up reports from Dr. Neese.

In an initial orthopedic evaluation report dated March 1, 2011, Dr. Samy F. Bishai, an orthopedic surgeon, diagnosed appellant with chronic cervical strain, chronic lumbosacral strain, lumbar disc syndrome, cervical disc syndrome, bilateral radiculopathy affecting the legs, degenerative changes of the AC joint of the right shoulder and degenerative bilateral arthritis of the knee joints.[2] He noted that appellant had suffered multiple injuries to different parts of his body due to a vehicular incident on February 4, 2008 and that appellant's current symptoms would prevent him from doing any type of work.

On December 9, 2010 Dr. Walter E. Afield, Board-certified in psychiatry and neurology, examined the results of a nerve conduction study of appellant's legs. He stated findings suggestive of radiculopathy or other demyelinating neuropathy involving the left L5 nerve root. Dr. Neese added "neuropathy involving the left L5 nerve root" to appellant's list of diagnosed conditions on January 3, 2011.

In a diagnostic report dated August 29, 2011, Dr. Alan J. Cousin, a Board-certified radiologist, examined the results of a magnetic resonance imaging (MRI) scan of appellant's cervical spine. He found disc bulges at C2-3, C3-4, C4-5 and C5-6.

On March 19, 2012 OWCP stated that the medical evidence of record was not sufficient to reflect that the many months of physical therapy had resulted in any material or symptomatic effect on his condition and that therefore it could not authorize additional physical therapy for the dates March 13 through April 13, 2012.

On April 4, 2012 Dr. Sonia Tolgyesi, Board-certified in psychiatry and neurology, examined the results of soft tissue sonograms of appellant's thoracic, lumbar and cervical spine in order to determine the location of soft tissue inflammation or nerve root area involvement. She found that his thoracic spine was within normal limits. Appellant's lumbar spine had mild-to-moderate inflammation at L5 and S1, while his cervical spine had mild inflammation at C5 and C7.

OWCP referred appellant for another second opinion examination on July 19, 2012, noting that the appointment would determine whether he was eligible for a schedule award. Appellant's representative requested that OWCP cancel the scheduled appointment by letter dated July 31, 2012, noting that appellant had not requested a schedule award. By letter dated August 22, 2012, OWCP stated that the language regarding a schedule award in its referral was a

[2] Dr. Bishai's Board certification in a medical specialty could not be determined from a search of the databases of the American Board of Medical Specialties or the American Osteopathic Association.

typographical error, that the evaluation would provide OWCP with additional evidence regarding the nature of his condition, extent of disability and appropriate treatment and that his appointment was not cancelled.

In a diagnostic report dated August 30, 2012, Dr. Timken reviewed the results of an MRI scan of appellant's cervical spine. He found cervicothoracic levoscoliosis; reversal of the upper cervical lordosis; loss of disc height and a disc bulge at C3-4; disc bulge at C4-5; loss of disc hydration and disc bulge at C5-6; narrowing of the right neural foramen at C6-7; and a two millimeter (mm) antherolisthesis of C7 on T1. An MRI scan of the right knee on the same date revealed a suspect tear of the posterior horn of the medial meniscus with attenuation of the posterior horn, joint effusion, patellofemoral fluid collection, chondromalacia patellae and periarticular edema with a medial popliteal cyst. An MRI scan of the lumbar spine on the same date revealed thoracolumbar levoscoliosis; chronic anterior wedging of L1; a disc bulge at L1-2; loss of disc height and hydration with a diffuse circumferential disc bulge at L2-3, L3-4 and L4-5; and a disc bulge effacing the ventral epidural fat with a two mm posterolisthesis at L5-S1.

In a second opinion report dated September 18, 2012, Dr. Jonathan D. Black, a Board-certified orthopedic surgeon, performed a physical examination, reviewed the medical evidence of record and determined that appellant's accepted work-related conditions had resolved. He found that there were no objective findings to support disability from the standpoint of cervical strain, thoracic strain, fracture to the sternum, fracture to the left toe, right shoulder dislocation or right shoulder strain and that in consideration of these injuries alone, appellant was capable of performing his prior duties as a rural carrier. He noted that appellant had "no relief of his right knee symptoms," "neck pain," and "low-back pain." Dr. Black stated that appellant exhibited "mild decreased range of motion" with "no production of radicular symptoms" with regard to appellant's cervical spine; "decreased range of motion in flexion and extension" of the lumbar spine; and "pain … on forward flexion and abduction" of the right shoulder. He noted that subjective complaints outweighed the objective findings concerning appellant's injuries.

On September 13, 2012 Dr. Bishai reviewed appellant's medical records, performed a physical examination and reviewed the August 30, 2012 diagnostic studies of Dr. Timken. He diagnosed appellant with chronic cervical strain, chronic lumbosacral strain, lumbar disc syndrome, cervical disc syndrome, multiple disc bulges of the cervical and lumbar spine, anterolisthesis of C7 on T1, bilateral radiculopathy affecting the legs, posterolisthesis of L5 on S1, degenerative changes of the right AC joint, bilateral degenerative arthritis of the knees, status postop arthroscopic surgery on the right knee, internal derangement of the right knee, status postop surgical treatment of recurrent dislocation of the right shoulder, a torn posterior horn of the medial meniscus of the right knee joint and chondromalacia of the right knee joint.

By letter dated September 13, 2012, addressed to a claims examiner, Dr. Bishai requested that OWCP expand appellant's claim to include the additional diagnoses of bilateral lumbar and cervical radiculopathy and displacement of lumbar and cervical discs. He included his report of September 13, 2012 and several diagnostic studies and asked OWCP to continue to authorize physical therapy for appellant's condition, noting that his symptoms had worsened. Appellant submitted further progress reports from Dr. Bishai through April 2, 2013, at which Dr. Bishai performed physical examinations and reviewed appellant's case history.

In a report dated May 21, 2013, Dr. Bishai performed a physical examination, reviewed appellant's case history and restated his diagnoses of September 13, 2012, adding diagnoses of

shoulder impingement syndrome of the right shoulder and rotator cuff syndrome of the right shoulder. He stated:

> "[Appellant] has suffered multiple severe injuries to different parts of his body and different joints of his body. These injuries occurred on [February 4, 2008] and he has been recovering slowly from these injuries but he still has quite a bit of residuals from this accident that he was involved in while working and caused him to have these multiple problems with different joints of his body."

In a September 12, 2013 letter, OWCP advised appellant that it proposed to terminate his medical benefits and wage-loss compensation as he had no continuing residuals or disability due to his work injuries. It indicated that the weight of the medical evidence regarding work-related residuals and disability rested with the rationalized opinion of Dr. Black, as his report was the only current rationalized medical evidence based on his current condition. OWCP provided appellant with 30 days from the date of the letter to submit additional evidence and argument challenging the proposed termination action.

By letter dated October 10, 2013, appellant's representative stated that OWCP should not terminate appellant's benefits based on Dr. Black's report, as it did not include any evaluation of appellant's accepted knee injuries. On November 21, 2013 OWCP asked Dr. Black to clarify his report with regard to appellant's right patella condition.

On December 6, 2013 Dr. Black responded to OWCP's request for clarification. He stated that appellant had no objective findings on physical examination to support orthopedic residuals from the right patella fracture, noting that he sustained a nondisplaced right patellar fracture that did not require upper reduction internal fixation and was treated in a brace. Subsequently, appellant underwent an arthroscopic procedure at which time a synovectomy was performed. Dr. Black noted that appellant had reached maximum medical improvement of his right patellar fracture and that objective diagnostic studies had since confirmed healing at the fracture site, with no objective findings supporting continued disability due to the right patella.

In a December 17, 2013 decision, OWCP terminated appellant's medical benefits and wage-loss compensation effective December 17, 2013 on the grounds that he no longer had any residuals or disability stemming from his work-related injury.

LEGAL PRECEDENT

Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation benefits.[3] After it has determined that an employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employing establishment.[4] The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, OWCP

[3] *Gewin C. Hawkins*, 52 ECAB 242, 243 (2001); *Alice J. Tysinger*, 51 ECAB 638, 645 (2000).

[4] *Mary A. Lowe*, 52 ECAB 223, 224 (2001).

must establish that a claimant no longer has residuals of an employment-related condition, which requires further medical treatment.[5]

ANALYSIS

OWCP accepted that appellant sustained sprains of the neck and the thoracic region of the back, fractures of the right patella, sternum and left phalanges of the foot and dislocation and internal derangement of the right shoulder due to a vehicular incident on February 4, 2008. Based on the September 18, 2012 report of Dr. Black, the second opinion examiner, OWCP found that appellant no longer had residuals of his accepted work-related conditions and terminated his wage-loss compensation and medical benefits.

The Board finds that Dr. Black's opinion is insufficiently rationalized to justify the termination of appellant's wage-loss compensation and medical benefits effective December 17, 2013.[6]

Dr. Black performed a physical examination, reviewed the medical evidence of record and determined that appellant's accepted work-related conditions had resolved. He found that there were no objective findings to support disability from the standpoint of cervical strain, thoracic strain, fracture to the sternum, fracture to the left toe, right shoulder dislocation or right shoulder strain and that in consideration of these injuries alone, appellant was capable of performing his prior duties as a rural carrier. Dr. Black noted, nonetheless, that appellant had "no relief of his right knee symptoms," "neck pain," and "low-back pain." He stated that appellant exhibited "mild decreased range of motion" with "no production of radicular symptoms" with regard to appellant's cervical spine; "decreased range of motion in flexion and extension" of the lumbar spine; and "pain … on forward flexion and abduction" of the right shoulder. Dr. Black noted that subjective complaints outweighed the objective findings concerning appellant's injuries.

The Board notes that despite providing an opinion that appellant's February 4, 2008 work injuries had resolved, Dr. Black did not provide sufficient rationale to support his opinion. His medical opinion of no residual work-related injuries was supported only by conclusory statements that there were no objective findings to support orthopedic residuals, yet he found pain and decreased range of motion on examination. In his supplemental opinion regarding appellant's right patella, Dr. Black's opinion that appellant had no work-related residual injury was equally vague and insufficiently rationalized. The Board has held that a medical opinion which is not fortified by medical rationale is of limited probative value on a given medical issue.[7] Dr. Black's objective findings on examination did not fully support his statement that appellant's February 4, 2008 injuries had resolved. He did not adequately explain his opinion that appellant ceased to have residuals of these injuries in light of the objective findings.

[5] *Id.; Leonard M. Burger*, 51 ECAB 369, 369 (2000).

[6] *Cf. C.W.*, Docket No. 13-1248 (issued December 6, 2013).

[7] *See George Randolph Taylor*, 6 ECAB 986 (1954) (finding that a medical opinion not fortified by medical rationale is of little probative value).

Consequently, OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective December 17, 2013.

CONCLUSION

The Board finds that OWCP did not meet its burden of proof to terminate wage -loss and medical benefits.

ORDER

IT IS HEREBY ORDERED THAT the December 17, 2013 decision of the Office of Workers' Compensation Programs is reversed.

Issued: December 3, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board