

	)	
<b>J.H., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 11-1211</b>
	)	<b>Issued: December 5, 2011</b>
<b>DEPARTMENT OF THE ARMY, HUNTER</b>	)	
<b>ARMY AIRFIELD, Savannah, GA, Employer</b>	)	
	)	

### Case Submitted on the Record

Before:  
RICHARD J. DASCHBACH, Chief Judge  
ALEC J. KOROMILAS, Judge  
COLLEEN DUFFY KIKO, Judge

On April 21, 2011 appellant filed a timely appeal from a February 23, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) terminating his compensation benefits. Pursuant to the Federal Employees' Compensation Act (FECA)<sup>1</sup> and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issues are: (1) whether OWCP properly terminated appellant's compensation effective February 24, 2011 on the grounds that he had no further disability causally related to

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

his accepted employment injury; and (2) whether it properly terminated authorization for medical benefits.

### **FACTUAL HISTORY**

On December 29, 1970 appellant, then a 36-year-old equipment mechanic, filed a claim alleging that on that date he injured his back lifting batteries. OWCP accepted his claim for back strain and an aggravation of degenerative arthritis of the back. After sustaining intermittent periods of disability, appellant stopped work on June 1, 1972 and did not return. OWCP paid him compensation for total disability.

By letter dated June 15, 2010, OWCP referred appellant to Dr. Douglas Hein, a Board-certified orthopedic surgeon, for a second opinion examination.<sup>2</sup> On July 21, 2010 Dr. Hein discussed appellant's history of a December 1970 work injury and noted that he had other nonemployment-related medical conditions. On examination he found no tenderness, spasm, loss of sensation or strength and a negative straight leg test. Dr. Hein diagnosed mild degenerative disc disease "frequently found in people of his age." He found no significant disc problems, neurological deficits or spinal stenosis. Dr. Hein opined that the subjective complaints outweighed the objective findings on examination and by history. He determined that appellant's current condition was not due to the December 29, 1970 employment injury. Dr. Hein explained that the work injury "should have been a self-limited process, particularly since there was no evidence of herniated nucleus pulposa or complaints to suggest that at that time." He opined that appellant's condition resolved within 6 to 12 months of the injury and that after that date he had no further work restrictions due to his employment injury. In an accompanying work restriction evaluation, Dr. Hein found that he could perform his usual employment.

On January 20, 2011 OWCP notified appellant of its proposed termination of compensation and authorization for medical benefits. In response to the proposed termination, he submitted an April 15, 2010 medical report from Dr. Andrew T. Sheils, Jr., a Board-certified orthopedic surgeon, who related that a 2006 magnetic resonance imaging (MRI) scan study showed lumbar spinal stenosis. Dr. Sheils diagnosed "lumbar spine pathology manifesting as lumbar spinal stenosis."

In a medical report dated January 27, 2011, Dr. Sheils noted that OWCP was attempting to terminate appellant's compensation. He stated, "What is in his back at this point is chronic degenerative conditions. Any work injury that he had back years ago is very unlikely to be in play at this point."

By decision dated February 23, 2011, OWCP terminated appellant's compensation and authorization for medical treatment effective February 24, 2011. It found that the weight of the evidence established that he had no further employment-related disability or need for further medical treatment.

---

<sup>2</sup> The most recent medical report at the time of OWCP's referral of appellant to Dr. Hein was dated September 19, 2006.

On appeal appellant argues that Dr. Hein only watched him walk across the room and checked his reflexes during his examination. He further questions why Dr. Sheils found that he could go to work given that he had treated him with an injection.

### **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. It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.<sup>3</sup> OWCP's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>4</sup>

### **ANALYSIS -- ISSUE 1**

OWCP accepted that appellant sustained back strain and an aggravation of degenerative arthritis of the back. It paid him compensation for disability from 1972 onward.

As the record contained no current medical evidence, on June 15, 2010 OWCP referred appellant to Dr. Hein for a second opinion examination. It terminated his compensation benefits based on its finding that Dr. Hein's report constituted the weight of the medical evidence and established that he had no further employment-related disability. The Board has reviewed the opinion of Dr. Hein and finds that it has reliability, probative value and convincing quality with respect to the conclusions reached. He found that appellant had no further disability due to his accepted work injury after a thorough review of the factual and medical history and detailed findings on physical examination. Dr. Hein advised that appellant's work injury to his back resolved within one year of the injury. He provided medical rationale for his opinion by explaining that he found no evidence on examination of neurologic deficits or disc problems and that appellant's current diagnosis was mild degenerative disc disease consistent with age. Considering only his employment-related back condition, Dr. Hein found that he could resume his regular employment duties.

The remaining evidence submitted prior to OWCP's termination of benefits is insufficient to support that appellant remains disabled due to his employment injury. In a report dated April 15, 2010, Dr. Sheils diagnosed lumbar spinal stenosis. He did not, however, address the cause of the diagnosed condition and thus his opinion is of little probative value.<sup>5</sup>

On January 27, 2011 Dr. Sheils diagnosed a chronic, degenerative condition and opined that it was "very unlikely" that appellant's work injury was "in play at this point." His opinion thus does not support that appellant has further disability due to his December 29, 1970 employment injury.

---

<sup>3</sup> *Elaine Sneed*, 56 ECAB 373 (2005); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

<sup>4</sup> *Gewin C. Hawkins*, 52 ECAB 242 (2001).

<sup>5</sup> The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship. See *Conard Hightower*, 54 ECAB 796 (2003).

The Board finds that Dr. Hein's second opinion report is sufficiently rationalized to establish that appellant's employment-related back strain and aggravation of degenerative back arthritis have resolved.<sup>6</sup> Dr. Hein's reasoned opinion is based on a proper factual and medical history and statement of accepted facts. There is no medical evidence showing any continuing disability due to his accepted conditions.

On appeal appellant maintains that Dr. Hein did not conduct a thorough examination. He did not, however, submit any evidence supporting his allegation. Appellant also questions why Dr. Sheils found that he could work while also offering medical treatment. Dr. Sheils, however, addressed whether appellant's condition was related to his employment injury rather than his ability to return to work.

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

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.<sup>7</sup> 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.<sup>8</sup>

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

OWCP met its burden of proof to terminate authorization for medical benefits through the opinion of Dr. Hein, who provided a second opinion examination and found that appellant had no residuals of his accepted condition. He determined that appellant's condition had resolved within a year of the work injury. As Dr. Hein's opinion is detailed and well rationalized, it constitutes the weight of the evidence and establishes that he has no further residuals of his accepted employment injury.<sup>9</sup>

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 properly terminated appellant's compensation and authorization for medical treatment effective February 24, 2011 on the grounds that he had no further disability or condition causally related to his accepted employment injury

---

<sup>6</sup> See *Michael S. Mina*, 57 ECAB 379 (2006) (in assessing medical evidence, the weight of such evidence is determined by its reliability, its probative value and its convincing quality; the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion are facts which determine the weight to be given to each individual report).

<sup>7</sup> See *T.P.*, 58 ECAB 524 (2007); *Pamela K. Guesford*, 53 ECAB 727 (2002).

<sup>8</sup> *Id.*

<sup>9</sup> See *Jaja K. Asaramo*, 55 ECAB 200 (2004).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 23, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 5, 2011  
Washington, DC

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

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board