

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

T.H., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
New York City, NY, Employer**

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**Docket No. 11-1685
Issued: May 16, 2012**

Appearances:

*Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On July 14, 2011 appellant, through his attorney, filed a timely appeal from a July 7, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether OWCP properly terminated appellant's wage-loss compensation and medical benefits effective March 15, 2009; and (2) whether appellant established that he had any disability caused by residuals of his accepted conditions following the termination of his compensation benefits.

FACTUAL HISTORY

On December 11, 2002 appellant, then 55-year-old mail carrier, felt pain in his low back, which progressed into his right leg while boxing mail. The record reflects that he was working

¹ 5 U.S.C. §§ 8101-8193.

full-time light duty.² OWCP accepted the claim for neck strain and back spasm. Appellant returned to work part-time limited duty. OWCP subsequently accepted a recurrence of disability of June 12, 2003. Wage-loss benefits were paid and appellant was placed on the periodic compensation rolls. On October 29, 2004 appellant was involved in a nonwork-related motor vehicle accident.

In a February 9, 2007 progress note, Dr. Han Ki Sim, a Board-certified physiatrist, reported treating appellant for his work-related injuries since February 19, 2004. He provided a history of the December 2002 work injury and noted that appellant had back pain ever since. Appellant had a neurological work up and back surgery was recommended but he was reluctant to have surgery. Dr. Sim also noted a history of the motor vehicle accident of October 29, 2004 when appellant's car was hit from the rear end and he reinjured his low back. He indicated that appellant still had tingling pain in the low back and knotting pain in the left leg with occasional loss of balance and that he wore a back brace and used a cane to walk. Dr. Sim assessed chronic low back pain with bilateral L5-S1 radiculopathy. He opined that appellant was totally disabled and could not return to work. In a February 9, 2007 work capacity evaluation, Dr. Sim found that appellant could work two hours a day with changing position and limited activity.

OWCP referred appellant to Dr. Harvey L. Seigel, a Board-certified orthopedic surgeon, to determine appellant's current condition and whether he still had residuals from his accepted conditions. In a November 13, 2008 report, Dr. Seigel reviewed the medical history and the statement of accepted facts and set forth findings on examination. He noted that appellant was involved in a motor vehicle accident on October 29, 2004 and reinjured his low back and neck. Dr. Seigel also noted that the results of several diagnostic tests taken mid to late 2003, which noted marked desiccation of the disc with moderate to diffuse bulging of annulus and varying degree of large disc protrusion and laxity of the ligamenta flava from level T11 to L1 as well as grade one retrolisthesis at L4-5 and degenerative disc disease with hypertrophic change at multiple levels. Examination showed complete painless cervical range of motion. Lumbosacral spine range of motion was voluntarily diminished. There was no area of tenderness or muscle spasm in the spine. Dr. Seigel opined that the accepted conditions of neck strain and back strain and spasm had resolved and that appellant had fully recovered from the effects of the December 11, 2002 work injury with no disabling residuals. He also opined that OWCP should not continue to accept the neck condition and noted that in the medical records appellant attributed the neck condition to a motor vehicle accident. Dr. Seigel opined that appellant could return to his original job as a mail carrier and completed a work capacity evaluation indicating no work restrictions.

On February 5, 2009 OWCP issued a notice of proposed termination of compensation to appellant. It found that the weight of the medical evidence, as represented by Dr. Seigel's opinion, established that his accepted neck and back sprain conditions had ceased and that he had no work-related residuals stemming from these conditions. No new medical evidence was received.

² Under claim File No. xxxxxx108, appellant has an accepted case for right quadriceps tendon rupture from February 26, 2002. He returned to work, full-time light duty with no wage loss beginning October 1, 2002. By decision dated March 10, 2003, OWCP issued a formal zero loss of wage-earning capacity decision. This other claim is not presently before the Board.

By decision dated March 11, 2009, OWCP terminated appellant's wage-loss compensation and medical benefits effective March 15, 2009, finding that Dr. Seigel's opinion represented the weight of the medical evidence.

On March 10, 2010 appellant requested reconsideration. He disputed OWCP's findings based on the medical evidence from his physicians. Appellant submitted several letters indicating the history of his back condition and the medical treatment. He submitted a September 21, 2009 functional capacity screening and diagnostic tests of October 21, 2007 and March 4, April 3, May 11, August 5 and September 17, 2009. The tests revealed degenerative discogenic disease resulting in lumbar stenosis and neural foraminal impingement; degenerative disc disease and disc bulges of the lumbar spine with resultant multilevel segmental moderate to marked central canal stenosis.

Dr. Dmitri Gorelov, an osteopath and a Board-certified neurologist. In a March 9, 2009 report, he indicated that appellant was under his medical care and was unable to work due to his medical condition. In a May 5, 2009 report, Dr. Gorelov assessed lower back pain with electrophysiological evidence of active on chronic bilateral L5 radiculopathy and peripheral neuropathy. In a May 11, 2009 report, he stated that appellant's spinal stenosis and lumbar radiculopathy precluded him from performing his job duties at the employing establishment. Numerous nursing notes and neurosurgery outpatient consultation reports from 2009 were received regarding the possible need for back surgery.

In an April 28, 2009 report, Dr. Zoltan Fekete, a neurologist, provided an assessment of chronic low back pain and active lumbar disc disease on chronic bilateral L5 radiculopathy on recent electromyogram.

In a May 21, 2010 decision, OWCP denied modification of the March 11, 2009 decision. It found that the evidence submitted did not provide a rationalized and comprehensive medical explanation as to how appellant's degenerative disc disease, various radiculopathies and spinal stenosis, which were disabling, were related to the December 11, 2002 work injury.

In a March 3, 2011 letter, appellant requested reconsideration. He indicated that, since the work injury in 2002, he had lived with lumbosacral spine pain that radiated to both his legs. Appellant stated that his medical record supported that his current back ailments were causally related to the 2002 work-related accident.

In a September 19, 2011 report, Dr. Fekete assessed hypercholesterolemia, lumbar disc disorder with myelopathy and benign hypertension. He indicated that appellant was seen by neurosurgery specialists, who found his medical documentation from 2003 and saw a connection between his present condition and the 2002 job injury. Appellant opined that this consideration was most probably the right one.

In a February 22, 2011 report, Dr. Sanjai Sinha, a Board-certified internist, indicated that appellant was her patient. She stated that his prior Veterans Administration notes regarding his chronic back pain were reviewed. Dr. Sinha stated that, since 2002, after appellant sustained a fall down four to five steps while delivering mail, he suffered a quadriceps rupture and back pain. Appellant was found to have multiple levels of lumbar spondylosis worst at L1-2. Per the

Veterans Administration neurosurgery team, surgery was recommended in 2009 but he declined. As appellant's neurological examination was stable, they did not think there was an urgent need for surgery; however, as pain persisted, they recommended surgery at some point, sooner rather than later. Dr. Sinha indicated that recently back exercises, back brace and other stress-reduction lifestyle changes had improved his symptoms, though he was still on pain medications. She opined that there were no inconsistencies from the prior notes and imaging studies and his condition of back pain today.

By decision dated July 7, 2011, OWCP denied modification of its prior decision.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.³ Having determined that an employee has a disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.⁴ Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁵ 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.⁶

OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁷ In addition to a proper factual and medical background, a rationalized medical opinion is one of reasonable medical certainty and supported by medical rationale explaining the opinion.⁸

ANALYSIS -- ISSUE 1

OWCP accepted that appellant had a neck strain and back spasm as a result of the December 18, 2002 work injury and he was eventually retained on the periodic compensation rolls. It terminated compensation for wage-loss and medical benefits effective March 15, 2009 based on the report of the Second Opinion Physician Dr. Seigel. At the time of OWCP's March 11, 2009 termination decision, the Board finds that the weight of the medical evidence was represented by the Second Opinion Physician Dr. Seigel, a Board-certified orthopedic surgeon, who submitted a well-rationalized opinion based on a complete and accurate factual and medical history.

³ *Bernadine P. Taylor*, 54 ECAB 342 (2003).

⁴ *Id.*

⁵ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁶ *Id.*

⁷ *J.M.*, 58 ECAB 478 (2007).

⁸ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

In a November 13, 2008 report, Dr. Seigel determined that appellant's accepted conditions of neck strain and back strain and spasm had resolved and there were no disabling residuals from the work injury. He detailed his findings on examination and explained that there were no objective findings that the accepted conditions continued. Dr. Seigel concluded that OWCP should not continue to accept the neck condition as appellant had attributed the neck condition to a nonwork-related motor vehicle accident. He also determined that appellant could return to his regular duties and that he had no work limitations. The Board finds that the weight of the medical evidence rested with the report of Dr. Seigel, who submitted a thorough medical opinion based on a complete and accurate factual and medical history. Dr. Seigel performed a complete examination, reviewed the record and found no basis on which to attribute any continuing condition or disability to the December 11, 2002 injury. While appellant's counsel contended before OWCP and on appeal that Dr. Seigel's opinion was conclusory and not well rationalized, this is not supported by the record. While Dr. Seigel's responses to the specific questions asked by OWCP were short and concise, he was thorough in reviewing the statement of accepted facts and medical documentation provided by OWCP and set forth detailed examination findings that were consistent with his conclusions. His medical opinion, when read in conjunction with the context of his entire report, is based on a complete and accurate factual and medical history. Thus, the Board finds that Dr. Seigel's report established that appellant ceased to have any disability or condition causally related to the accepted employment injuries, thereby justifying OWCP's March 11, 2009 termination of benefits, including medical benefits.

LEGAL PRECEDENT -- ISSUE 2

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that he had an employment-related disability, which continued after termination of compensation benefits.⁹

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between appellant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of appellant, 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 appellant.¹⁰

ANALYSIS -- ISSUE 2

Subsequent to OWCP's March 11, 2009 decision, appellant requested reconsideration twice and submitted additional evidence. OWCP denied modification in decisions dated May 21, 2010 and July 7, 2011. The additional evidence, including the September 21, 2009

⁹ *Talmadge Miller*, 47 ECAB 673, 679 (1996); *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

¹⁰ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

functional capacity screening, numerous diagnostic testing as well as numerous nursing notes and neurosurgery outpatient consultation reports, did not offer any opinion on whether appellant's continuing conditions or disability were causally related to the December 11, 2002 work injury.

The reports from Dr. Gorelov noted that appellant was unable to work due to spinal stenosis and lumbar radiculopathy. Dr. Fekete provided an assessment of chronic low back pain and active lumbar disc disease on chronic bilateral L5 radiculopathy on recent electromyograms. OWCP accepted neck strain and back spasm. Neither Dr. Gorelov nor Dr. Fekete addressed or explained how the diagnosed conditions were caused or aggravated by the December 11, 2002 work injury.¹¹ Their reports are of diminished probative value.¹² In a September 19, 2011 report, Dr. Fekete diagnosed hypercholesterolemia and lumbar disc disorder with myelopathy and benign hypertension. He noted that numerous specialists saw a connection between appellant's present condition and the 2002 work injury and opined that this consideration was probably correct. Dr. Fekete did not adequately explain why the diagnosed condition was attributable to the accepted employment injuries. Thus, his report is of little probative value.

In a February 22, 2011 report, Dr. Sinha noted appellant's history since 2002 and stated that there were no inconsistencies from the prior notes from the Veterans Administration regarding his chronic back pain, the imaging studies and appellant's current back pain today. However, she did not provide medical rationale supporting a causal relationship between appellant's work injury and his current condition. Dr. Sinha did not explain how any continuing condition or disability were caused or aggravated by his accepted neck strain and back spasms. As this opinion is not supported by medical rationale, her report is insufficient to create a conflict with the opinion of Dr. Seigel or to require further development by OWCP.

Consequently, appellant has not established that his condition on and after March 15, 2009, when the termination became effective, was causally related to his accepted employment injury.

CONCLUSION

The Board finds that OWCP met its burden of proof in terminating appellant's benefits effective March 15, 2009 and that he did not meet his burden of proof to establish that he had any injury-related condition or disability after March 15, 2009 causally related to the December 11, 2002 employment injury.

¹¹ See *Jaja K. Asaramo*, 55 ECAB 200 (2004) (for conditions not accepted or approved by OWCP, the employee bears the burden of proof to establish that the condition is causally related to the employment injury).

¹² See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated July 7, 2011 is affirmed

Issued: May 16, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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