

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

M.N., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Bellmawr, NJ, Employer**

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**Docket No. 13-2142
Issued: February 7, 2014**

Appearances:

Jason S. Lomax, 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 September 25, 2013 appellant, through his representative, filed a timely appeal from the May 31, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review this decision.

ISSUE

The issue is whether appellant's disability after January 15, 2012 was causally related to his April 3, 2010 employment injury.

FACTUAL HISTORY

On April 3, 2010 appellant, a 49-year-old clerk expeditor, sustained a traumatic injury in the performance of duty when an all-purpose carrier struck him in the back. OWCP accepted his

¹ 5 U.S.C. § 8101 *et seq.*

claim for lumbar sprain.² Appellant received compensation for temporary total disability on the periodic rolls.

In a decision dated January 5, 2012, OWCP terminated appellant's compensation effective January 15, 2012. It found that the well-reasoned second opinion of Dr. Stanley Askin, a Board-certified orthopedic surgeon, represented the weight of the medical evidence and established that the accepted lumbar sprain had resolved with no objective manifestation of a lingering problem.

On February 17, 2012 Dr. Daniel DePrince III, the attending osteopath, noted the history of injury, appellant's post-traumatic complaints, findings on physical examination and the results of diagnostic testing, including an electrodiagnostic study on February 7, 2012 deemed consistent with a subacute left L5-S1 radiculopathy. He diagnosed post-traumatic multilevel disc bulging and post-traumatic lumbar radiculopathy and supported that these were a direct and permanent result of the work incident:

"Due to [appellant's] low back, mechanism of injury, damage to surrounding soft tissue and the severity and persistence of his symptoms, it is my opinion that within a reasonable degree of medical probability that the injuries sustained to his low back and lower extremities are a direct result of the work-related accident on April 3, 2010."

On August 20, 2012 an OWCP hearing representative affirmed the January 5, 2012 decision terminating appellant's compensation, but found that the newly submitted evidence warranted further development. As the electrodiagnostic testing Dr. DePrince mentioned was not available to Dr. Askin, the hearing representative remanded the case for a supplement report from the second-opinion physician.

Dr. Askin reviewed the new evidence on October 15, 2012. He found the electrodiagnostic studies were not objective as a single patient evaluated by more than one electromyographer will routinely have different results. Even if the electrodiagnostic impressions were accepted as dispositive of some imperfection, it did not establish that such imperfection either caused appellant's symptoms or resulted from the reported injury. In short, the documentation provided did not persuade Dr. Askin that his initial opinion was incorrect or needed to be amended. He considered appellant able to return to work and he was not presented with any reliable documentation that he should change his conclusion.

On November 26, 2012 OWCP indicated that it was terminating appellant's compensation effective that date.

In a decision dated May 31, 2013, an OWCP hearing representative found that appellant was not entitled to compensation after January 15, 2012 as a result of the accepted work injury.

² One witness stated that appellant stated that he was all right at first, but a couple of minutes later claimed that the impact had caused him to chip his tooth.

LEGAL PRECEDENT

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of his duty.³ “Disability” means the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury. It may be partial or total.⁴

When OWCP meets its burden of proof in justifying termination of compensation benefits, the burden is on the claimant to establish that any subsequent disability is causally related to the accepted employment injury.⁵

It is not sufficient for the claimant to establish merely that he or she has disability for work. He or she must establish that his or her disability is causally related to the accepted employment injury. The claimant must submit a rationalized medical opinion that supports a causal connection between his or her current disabling condition and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the employment injury and must explain from a medical perspective how the current disabling condition is related to the injury.⁶

ANALYSIS

OWCP accepted appellant’s claim for the diagnosis of lumbar sprain. In a January 5, 2012 decision, it terminated compensation for that medical condition effective January 15, 2012. Finding that OWCP met its burden of proof, a hearing representative affirmed the termination on August 20, 2012. Appellant did not appeal that decision to the Board. The issue of termination is not before the Board on this appeal.⁷

As OWCP was found to have met its burden of justifying the termination of appellant’s compensation benefits for the condition of lumbar sprain, the burden shifted to appellant to establish that any disability after January 15, 2012 was causally related to his April 3, 2010 employment injury.

Dr. DePrince, the attending physician, supported that appellant continued to suffer from the incident on April 3, 2010. He did not diagnose a continuing lumbar sprain nor did he disagree with Dr. Askin, the second-opinion orthopedic surgeon, that the accepted soft-tissue

³ 5 U.S.C. § 8102(a).

⁴ 20 C.F.R. § 10.5(f).

⁵ *Wentworth M. Murray*, 7 ECAB 570 (1955) (after a termination of compensation payments, warranted on the basis of the medical evidence, the burden shifts to the claimant to show by the weight of the reliable, probative and substantial evidence that, for the period for which he claims compensation, he had a disability causally related to the employment resulting in a loss of wage-earning capacity); *Maurice E. King*, 6 ECAB 35 (1953).

⁶ *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

⁷ See 20 C.F.R. § 501.3.

injury had resolved.⁸ Instead, Dr. DePrince attributed appellant's multilevel disc bulging and left L5-S1 radiculopathy to the April 3, 2010 incident.

Dr. DePrince's opinion is supportive of appellant's claim, but he did not present sufficient medical rationale to establish the element of causal relationship. He did not explain, for example, how he was able to determine that the April 3, 2010 incident caused multilevel disc bulges. Dr. DePrince did not explain how he was able to determine that these disc bulges were not preexisting. He did not explain how a left L5-S1 radiculopathy confirmed on February 7, 2012 was the result of what happened on April 3, 2010. Dr. DePrince noted the mechanism of injury but did not account for evidence that appellant stated that he was all right at first and a couple of minutes later claimed that the impact had caused him to chip his tooth. How this was consistent with an impact sufficient to cause multilevel disc bulges and radiculopathy is not explained.

Given the medical evidence submitted the Board finds that Dr. DePrince's opinion is of diminished probative value. The fact that medical conditions are identified on diagnostic studies obtained after an incident does not imply that the incident caused or aggravated those conditions. A well-reasoned medical opinion is required to establish causal relationship. It is not necessary that the evidence be so conclusive as to suggest causal connection beyond all possible doubt. The evidence required is only that necessary to convince the adjudicator that the conclusion drawn is rational, sound and logical.⁹

Because Dr. DePrince did not adequately support his opinion on causal relationship, the Board finds that appellant has not met his burden to establish that his disability after January 15, 2012 was causally related to his April 3, 2010 employment injury. The Board will affirm OWCP's May 31, 2013 decision.

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 appellant has not met his burden to establish that his disability after January 15, 2012 was causally related to his April 3, 2010 employment injury.

⁸ There is no conflict between Dr. DePrince and Dr. Askin. They addressed different issues.

⁹ See *Philip J. Deroo*, 39 ECAB 1294 (1988) (although the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute medical certainty, neither can such opinion be speculative or equivocal); *Kenneth J. Deerman*, 34 ECAB 641, 645 (1983) and cases cited therein at note 1.

ORDER

IT IS HEREBY ORDERED THAT the May 31, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 7, 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