

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

R.P., Appellant

and

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

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 15-0977
Issued: November 2, 2015**

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 30, 2015 appellant, through counsel, filed a timely appeal from a January 20, 2015 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 over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he had residuals of his July 8, 2000 work injury after August 25, 2012.

FACTUAL HISTORY

OWCP accepted that on July 8, 2000 appellant, then a 39-year-old letter carrier, sustained a lumbar sprain when he sat down in a straight-back chair on that date. His claim was later

¹ 5 U.S.C. § 8101 *et seq.*

accepted for aggravation of lumbar disc displacement. Appellant received disability compensation on the periodic rolls.²

By decision dated April 8, 2011, OWCP terminated appellant's entitlement to wage-loss compensation and medical benefits with respect to the July 8, 2000 employment injury. It found that the weight of medical opinion was represented by the July 23, 2010 report of Dr. Stanley Askin, a Board-certified orthopedic surgeon serving as an OWCP referral physician. Appellant requested a hearing.

In a November 2, 2011 decision, an OWCP hearing representative found that Dr. Askin's report required clarification regarding appellant's continuing disability and residuals. The case was remanded to OWCP to request a supplemental report from Dr. Askin addressing whether appellant continued to have disability or residuals related to the accepted July 8, 2000 work conditions. After receiving Dr. Askin's November 28, 2011 response, OWCP terminated appellant's entitlement to wage-loss compensation and medical benefits in a December 14, 2011 decision. Appellant again requested a hearing.

In a March 15, 2012 decision, an OWCP hearing representative found that Dr. Askin's report was not sufficient to support the termination of wage-loss compensation and medical benefits. The case was remanded to OWCP in order to refer appellant for a new second opinion evaluation addressing his continuing work-related disability and residuals.

In a February 16, 2012 report, Dr. Frank Alario, an attending Board-certified internist, discussed appellant's medical history, including the July 8, 2000 work injury. He also described appellant's back problems, including chronic low back pain, and degenerative disc disease at L4-5 and L5-S1. In a February 29, 2012 report, Dr. Peter DiPaolo, an attending Board-certified orthopedic surgeon, discussed appellant's herniated discs at L4-5 and L5-S1 and advised that he was disabled due to these conditions and needed surgery.

In an April 25, 2012 report, Dr. Kenneth Heist, a Board-certified orthopedic surgeon serving as an OWCP referral physician, discussed his review of the medical records and detailed findings on physical examination. He concluded that there was no medical evidence of a condition causally related to the July 8, 2000 lumbar injury. Dr. Heist found that there was no basis for physical restrictions due to the July 8, 2000 work injury as there were no objective findings supportive of continuing disability. He diagnosed "chronic mid-lumbar sprain" and stated that his clinical examination of the lumbar spine documented a restriction in the last 10 degrees of motion. Dr. Heist attributed this circumstance to degenerative spinal disease and stated, "There are no medical findings that the conditions causally related to the employment injury (sitting in a straight-backed chair) are still active. There are no objective findings related to the injury. There is no current disability."

In a May 11, 2012 report, Dr. Jeffrey Oppenheimer, an attending Board-certified neurosurgeon, discussed appellant's cervical problems. He diagnosed lumbago secondary to

² Under a separate claim (file number xxxxxx150), OWCP accepted that on October 19, 1994 appellant sustained a right wrist fracture and ulnar nerve lesion.

two-level lumbar disc disease and cervicgia with left C5, C6, and C7 radiculitis, most likely secondary to disc disease.

OWCP requested clarification of Dr. Heist's April 25, 2012 opinion. In a July 21, 2012 addendum report, Dr. Heist further explained that there was no objective evidence that appellant's present condition was causally related to the July 8, 2000 work injury or that there was a work-related lumbar condition that continued to be active.

By decision dated August 20, 2012, OWCP terminated appellant's wage-loss compensation and medical benefits effective August 25, 2012. It found that Dr. Heist's second opinion reports established that appellant had no continuing residuals or disability related to the accepted July 8, 2000 work injury.³

Appellant requested a hearing before an OWCP hearing representative regarding the termination decision. During the December 28, 2012 hearing, counsel argued that the reports of appellant's attending physicians showed that he still had residuals of the July 8, 2000 work injury or at least that there was a conflict in the medical opinion evidence regarding work-related residuals between Dr. Heist and appellant's attending physicians.⁴

In a March 14, 2013 decision, an OWCP hearing representative affirmed the August 20, 2012 termination decision, finding that the weight of the medical evidence continued to rest with the opinion of Dr. Heist.

Appellant submitted an April 12, 2013 report of Dr. Oppenheimer; April 10, 24 and 30, 2013 reports of Dr. Alario; and a March 29, 2013 report of Dr. DiPaolo. Dr. Oppenheimer advised that appellant's neck condition was aggravated by his weight-bearing work duties. Dr. Alario expressed disagreement with Dr. Heist's opinion and stated that appellant's back problems were related to the July 8, 2000 work injury. He also indicated that appellant continued to have residuals of the July 8, 2000 work injury.

In a July 31, 2013 decision, OWCP affirmed its March 14, 2013 decision finding that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective August 25, 2012. It determined that the weight of the medical evidence rested with the opinion of Dr. Heist and that the reports of appellant's attending physicians were of

³ In an October 18, 2012 decision, issued in connection with appellant's July 8, 2000 low back injury, OWCP advised him that it had accepted that he sustained a recurrence of disability on April 10, 2010. In an October 19, 2012 decision, issued in connection with his October 19, 1994 right wrist injury, it rescinded its prior acceptance of his claim for a recurrence of disability on April 10, 2010. OWCP explained that the rescission was justified because the initial acceptance had been accepted under the wrong claim file. The Board notes that the rescission of appellant's claim for a recurrence of disability on April 10, 2010 is not the subject of the present appeal.

⁴ Appellant submitted a November 29, 2012 report of Dr. Oppenheimer and December 14, 2011 and February 29, 2012 reports of Dr. DiPaolo which contained discussions of appellant's back and neck problems.

limited probative value regarding his work-related residuals.⁵ In a January 22, 2014 decision, OWCP affirmed its July 31, 2013 decision.

By decision dated August 18, 2014,⁶ the Board affirmed OWCP's January 22, 2014 decision finding that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective August 25, 2012 because he had no residuals of his July 8, 2000 work injury after that date.⁷

In an October 29, 2014 letter, appellant, through counsel, requested reconsideration of OWCP's denial of wage-loss compensation and medical benefits after August 25, 2012 related to the July 8, 2000 work injury. Counsel argued that an enclosed October 14, 2014 report of Dr. Alario created a conflict in the medical opinion evidence regarding appellant's work-related residuals after August 25, 2012.

In his October 14, 2014 report, Dr. Alario stated that he examined appellant on that date for "evaluation of the residual effects from his work injury occurring on July 8, 2000." He indicated that nerve conduction testing from April 4, 2013 showed lumbosacral radiculopathy, magnetic resonance imaging (MRI) scan testing from September 2, 2014 revealed low back disc herniations, MRI scan testing from September 3, 2014 showed cervical disc changes, and electromyogram testing from November 20, 2006 established a left L5-S1 radiculopathy. Dr. Alario posited that appellant continued to suffer progressively worsening residual effects from the injuries he sustained at work on July 8, 2000. He found that appellant was disabled and asserted that his assessment was supported by other attending physicians, including Dr. DiPaolo and Dr. Oppenheimer. Dr. Alario stated:

"I strongly disagree with Dr. Heist's opinions formed during a brief evaluation performed on April 25, 2012. As evidenced by the above testing, [appellant] has sustained injuries that limit his range of movement and cause chronic pain numbness and inflammation due to the demands his employment at the [employing establishment]....

"[Appellant] has reached maximum medical improvement and continues to experience constant pain along with numbness in his feet as a direct result of the injuries to his neck and back. This has left him completely unable to work with no expectation of improvement. I feel that after the review of the [appellant's] description of his work injury and the review of the records as well as the findings seen on the MRI [scan], it is my opinion that [he] has objective findings that he is still suffering from injury as residuals relating to his work injury from 2000."

⁵ In an October 31, 2013 decision, issued in connection with appellant's October 19, 1994 right wrist injury, OWCP affirmed its October 19, 2012 decision rescinding its acceptance of his claim for a recurrence of disability on April 10, 2010.

⁶ Docket Nos. 14-0857 & 14-1536 (issued August 18, 2014).

⁷ The Board also found that OWCP properly rescinded its acceptance of appellant's claim for a recurrence of disability on April 10, 2010 due to his accepted right wrist conditions.

In a January 20, 2015 decision, OWCP found that appellant did not meet his burden of proof to establish that he had residuals of his July 8, 2000 work injury after August 25, 2012. It determined that the October 14, 2014 report of Dr. Alario was of little probative value regarding work-related residuals due to its lack of medical rationale.

LEGAL PRECEDENT

Once OWCP has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.⁸ It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁹ After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative, and substantial evidence that he or she had an employment-related disability which continued after termination of compensation benefits.¹⁰

ANALYSIS

OWCP accepted that on July 8, 2000 appellant sustained a lumbar sprain when he sat down in a straight-back chair on that date. Appellant's claim was later accepted for aggravation of lumbar disc displacement. In April 25 and July 21, 2012 reports, Dr. Heist, a Board-certified orthopedic surgeon serving as an OWCP referral physician, determined that appellant ceased to have residuals of his July 8, 2000 work injury. Based on the opinion of Dr. Heist, OWCP terminated appellant's wage-loss compensation and medical benefits effective August 25, 2012 because he had no residuals of his July 8, 2000 work injury after that date. By decision dated August 18, 2014, the Board affirmed OWCP's termination action finding that it met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective August 25, 2012 as the weight of the medical evidence rested with the well-rationalized opinion of Dr. Heist.¹¹

After OWCP's termination of appellant's wage-loss compensation and medical benefits effective August 25, 2012, he submitted additional medical evidence which he felt showed that he was entitled to compensation after August 25, 2012 due to residuals of his July 8, 2000 work injury. Given that the Board has found that OWCP properly relied on the opinion of OWCP referral physician, Dr. Heist, in terminating appellant's wage-loss compensation and medical

⁸ *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

⁹ *Id.*

¹⁰ *Wentworth M. Murray*, 7 ECAB 570, 572 (1955). Section 8123(a) of FECA provides in pertinent part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination." 5 U.S.C. § 8123(a).

¹¹ The matter of the termination of appellant's wage-loss compensation and medical benefits is not currently before the Board. It is noted that the Board's decisions and orders are final upon the expiration of 30 days from the date of their issuance and, in the absence of new review by OWCP, the subject matter is *res judicata* and not subject to further consideration by the Board. See 20 C.F.R. § 501.6(d); *Clinton E. Anthony, Jr.*, 49 ECAB 476, 479 (1998).

benefits effective August 25, 2012, the burden shifts to him to establish that he is entitled to compensation after that date. The Board has reviewed the additional evidence submitted by appellant and finds that it is not of sufficient probative value to establish that he had residuals of his July 8, 2000 employment injury after August 25, 2012.

In an October 14, 2014 report, Dr. Alario, an attending Board-certified internist, stated that he examined appellant on that date for “evaluation of the residual effects from his work injury occurring on July 8, 2000.” He discussed appellant’s diagnostic testing, noting positive findings emanating from the low back and neck, and detailed his complaints of low back and neck pain, and numbness in his feet. Dr. Alario found that appellant was disabled from work. Although he concluded that appellant’s medical conditions and disability were related his July 8, 2000 work injury, his opinion is of little probative value because he did not provide adequate medical rationale in support of his conclusion on causal relationship.¹²

Dr. Alario did not provide any detailed description of the July 8, 2000 work injury, which occurred when appellant sat down in a straight-back chair, or explain how it could have caused disability or need for medical care more than 14 years later. He detailed various findings on diagnostic testing and discussed appellant’s continuing symptoms, but he did not explain why these findings and symptoms were related to the July 8, 2000 work injury. Dr. Alario did not explain why appellant’s continuing problems were not related to some nonwork-related condition, such as the natural progression of degenerative disc disease.¹³

On appeal, counsel argued that the October 14, 2014 report of Dr. Alario created a conflict with the opinion of Dr. Heist, but Dr. Alario’s report is not of sufficient probative value on the relevant issue of the case to create a conflict in the medical evidence.¹⁴ For these reasons, appellant has not shown that he has residuals of his July 8, 2000 work injury after August 25, 2012.

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 did not meet his burden of proof to establish that he had residuals of his July 8, 2000 work injury after August 25, 2012.

¹² See *Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

¹³ Dr. Alario discussed appellant’s neck symptoms but OWCP has not accepted that appellant sustained a work-related neck condition and the medical evidence does not otherwise establish the existence of such a condition.

¹⁴ See *supra* note 10.

ORDER

IT IS HEREBY ORDERED THAT the January 20, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 2, 2015
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board