

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

M.M., Appellant)	
)	
and)	Docket No. 15-1353
)	Issued: October 13, 2015
DEPARTMENT OF JUSTICE, BUREAU OF)	
PRISONS, New York, NY, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 1, 2015 appellant filed a timely appeal from a May 11, 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 to consider the merits of this case.²

ISSUE

The issue is whether OWCP met its burden of proof to terminate wage-loss compensation and medical benefits effective May 11, 2015.

FACTUAL HISTORY

OWCP had accepted that appellant, then a 38-year-old correctional officer, sustained cervical, thoracic, and lumbosacral sprain/strains causally related to a September 15, 2004

¹ 5 U.S.C. § 8101 *et seq.*

² Appellant submitted additional evidence on appeal. The Board reviews only evidence that was before OWCP at the time of the final decision on appeal. 20 C.F.R. § 501.2(c)(1).

employment incident. Appellant received wage-loss compensation and medical benefits on the periodic rolls commencing October 18, 2004.

The case has been before the Board on two prior appeals. In a decision dated February 8, 2012, the Board reversed a May 19, 2011 OWCP decision terminating appellant's wage-loss compensation and medical benefits.³ The Board found that the report of the second opinion physician, Dr. William Dinenberg, a Board-certified orthopedic surgeon, did not provide a rationalized medical opinion to support his conclusion that the accepted employment-related conditions had resolved. The Board therefore concluded that OWCP had not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits.

Following the Board's reversal of the first termination decision, OWCP issued a second decision dated April 8, 2013 terminating compensation for wage-loss and medical benefits. According to OWCP, an August 6, 2012 report from a second opinion physician, Dr. Jonathan Black, a Board-certified orthopedic surgeon, was sufficient to terminate compensation. The Board reversed this termination by decision dated November 13, 2013.⁴ The Board found that Dr. Black had reported there were no objective findings, but had failed to provide additional explanation. Dr. Black had not discussed the diagnostic studies or examination findings with respect to his opinion that the record contained no evidence of objective findings to substantiate that appellant continued to have residuals of the accepted conditions. The history of the case as provided by the Board in its prior decisions is incorporated herein by reference.

On return of the case record, OWCP referred appellant for a second opinion examination by Dr. Fanourios Ferderigos, a Board-certified orthopedic surgeon. In his report dated January 24, 2014, Dr. Ferderigos provided a history, review of medical records, and results on examination. With respect to the spine he noted that appellant reported complaints of severe pain with even a light touch. Dr. Ferderigos reported range of motion results and that appellant did not appear to have any severe hypertoxicity on the lumbar spine to correlate with subjective findings. He noted that a magnetic resonance imaging (MRI) scan in the office showed satisfactory alignment of the cervical and lumbar spine, with no evidence of spondylolisthesis, compression fractures, or other osseous abnormality. Dr. Ferderigos opined that there were no objective findings for the accepted conditions, only subjective complaints. He opined that the accepted conditions had resolved and there were no objective findings to support continuing disability.

By letter dated March 3, 2014, OWCP informed appellant that its procedures required that a claimant on prolonged disability submit periodic medical reports to support a claim of continuing disability. Appellant was informed that he should be examined by a treating physician, following which a current narrative report from the physician regarding the status of his accepted work condition should be submitted to OWCP. OWCP did not receive any reports from a treating physician following this request.

On April 7, 2014 OWCP received a March 29, 2014 letter from appellant in which he informed appellant of a new address in Lakeland, Florida.

³ Docket No. 11-1565 (issued February 8, 2012).

⁴ Docket No. 13-1217 (issued November 13, 2013).

By letter dated March 26, 2015, addressed to appellant's last known address in Lakeland, Florida, OWCP advised him that it proposed to terminate compensation for wage-loss and medical benefits based on the second opinion physician's report. It indicated that he had 30 days to provide additional evidence or argument.

In a decision dated May 11, 2015, OWCP terminated wage-loss compensation and medical benefits. It found the weight of the evidence was represented by Dr. Ferderigos. The decision was sent to appellant's last known address.

LEGAL PRECEDENT

Once OWCP accepts a claim, it has the burden of proof to justify termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, it may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.⁵ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. 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

ANALYSIS

In the present case, OWCP accepted that appellant sustained cervical, thoracic and lumbosacral sprain/strains causally related to a September 15, 2004 employment incident. It referred appellant for a second opinion examination by Dr. Ferderigos. In his January 24, 2014 report, Dr. Ferderigos provided a complete report with a history, review of medical evidence, and results on examination. He opined that appellant had no objective findings of a continuing employment-related condition. This is consistent with an earlier August 6, 2012 report from Dr. Black, but unlike the report of Dr. Black, the January 24, 2014 report provides supporting medical rationale for the opinion. Dr. Ferderigos discussed current MRI scan results and found no evidence of spondylolisthesis or other abnormality. In addition to discussing diagnostic testing, he noted the physical examination results were limited to subjective findings which were not correlated with objective findings. Dr. Ferderigos opined that, based on his examination and test results, appellant's employment-related conditions had resolved.

The Board finds that the report of Dr. Ferderigos represents the weight of the evidence in this case. Appellant did not submit any current medical evidence supporting a continuing employment-related condition or disability. It is OWCP's burden of proof, and for the reasons stated, the Board finds that OWCP met its burden of proof to terminate wage-loss and medical compensation benefits effective May 11, 2015.

On appeal, appellant asserts that benefits were terminated before he received the notice of proposed termination and final termination decision. The Board notes that the March 26, 2015 notice of proposed termination and the May 11, 2015 termination decision were sent to

⁵ *Elaine Sneed*, 56 ECAB 373 (2005); *Patricia A. Keller*, 45 ECAB 278 (1993).

⁶ *Furman G. Peake*, 41 ECAB 361 (1990).

appellant's last known address in Lakeland, Florida, pursuant to regulations.⁷ In the absence of evidence to the contrary, it is presumed that a notice mailed to an addressee in the ordinary course of business was received by the addressee.⁸ There was no probative evidence to the contrary in this case. The Board finds that the presumption that the notice of proposed termination and final decision were properly mailed and received by appellant applies in the present case.

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 met its burden of proof to terminate wage-loss compensation and medical benefits effective May 11, 2015.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 11, 2015 is affirmed.

Issued: October 13, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

⁷ 20 C.F.R. § 10.127 provides that "[a] copy of the decision shall be mailed to the employee's last known address."

⁸ See *Larry L. Hill*, 42 ECAB 596, 600 (1991).