United States Department of Labor
Employees' Compensation Appeals Board

H.P., Appellant	)	
and	)	**Docket No. 08-1773**
	)	**Issued: April 6, 2009**
DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE, Brooklyn, NY, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 10, 2008 appellant filed a timely appeal of a March 12, 2008 decision of an Office of Workers' Compensation Programs' hearing representative who affirmed the termination of his compensation benefits. Pursuant to 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 the Office met its burden of proof to terminate appellant's compensation benefits effective September 7, 2007.

FACTUAL HISTORY

On September 8, 1989 appellant, then a 37-year-old maintenance mechanic, sustained a low back strain when he rode a lawnmower over a boardwalk that collapsed, causing him to fall into a three foot hole. The Office accepted his claim for low back strain. Following his injury, appellant returned to work with light-duty restrictions on lifting. On April 3, 1990 he injured his

back while moving and carrying boxes at work. Appellant stopped work that day and did not return. The Office accepted his claim for aggravated low back syndrome and herniated disc at L5-S1. It paid wage-loss compensation for total disability and placed him on periodic rolls effective August 22, 1990.

Appellant sought treatment from Dr. Michael Schuman, a Board-certified neurologist, between 1991 and 1992. On October 21, 1991 Dr. Schuman placed appellant on a "no straining routine," which included no lifting over 10 pounds. He concluded that appellant could not work. In a January 14, 1992 duty status report, Dr. Schuman noted that the duration of appellant's total disability was unknown. Subsequently, Dr. Edwin Chang, a Board-certified neurosurgeon and associate of Dr. Schumann, treated appellant. He diagnosed ventral and left side herniated disc at L5-S1 and recommended surgery. On January 5, 1999 Dr. Chang noted that appellant remained totally disabled and that he did not want to have surgery. In a February 3, 2000 progress note, he advised that appellant's condition remained unchanged. Dr. Chang attributed appellant's back condition as a direct result of his 1990 work injury. He advised that, as it had been 10 years since appellant's injury and he had not shown any sustained on permanent improvement, his disability was permanent. Appellant next sought treatment from Dr. Chang on February 26, 2002, at which time a prescription was refilled and appellant was discharged on an as-needed basis. On June 18, 2002 Dr. Dr. Chang examined appellant and noted no change in symptoms. He indicated that appellant's low back and neck pain were aggravated by any kind of physical activity or prolonged walking, standing or sitting.

In a November 3, 2004 report, Dr. Germaine Rowe, a Board-certified physiatrist and associate of Dr. Chang, noted appellant's history of chronic neck and low back pain from operating a lawnmower on a boardwalk that collapsed. She advised that the lumbar spine revealed minimal tenderness to palpation in the paraspinal muscles and there was virtually a full range of motion in the forward flexion and backward flexion extension. Dr. Rowe concluded that appellant had normal strength in the lower extremities of all muscle groups tested. She recommended a conservative pain management approach.

On April 21, 2006 the Office asked appellant to provide a medical report from his physician regarding the extent of his employment-related condition and disability.

Appellant subsequently submitted a December 15, 2004 report, previously not of record, from Dr. Rowe, who noted that appellant's physical examination remained the same. He ambulated with normal gait and his strength sensation and reflexes were intact. Dr. Rowe reiterated that appellant was not interested in pursuing any type of interventional treatment and was treated conservatively. Appellant also submitted medical evidence and physical therapy records previously of record.

On September 14, 2006 the Office referred appellant and a statement of accepted facts to Dr. Harold Alexander, a Board-certified orthopedic surgeon, for a second opinion evaluation. In an October 12, 2006 medical report, Dr. Alexander reviewed appellant's history and his medical treatment. On examination, he found that low back flexion, extension and side bending were 10 percent decreased in all ranges and his cervical spine had 20 percent decreased range of motion in all directions. In reviewing x-rays, Dr. Alexander found degenerative changes at C5-6 and C6-7 and marked narrowing of L5-S1 disc space with anterior osteophytosis of bony bridging.

He diagnosed cervical and lumbosacral degenerative disc disease. In response to the Office's questions, Dr. Alexander opined that appellant's lumbar condition had been aggravated and precipitated by his work injury but that the aggravation was temporary as he had been asymptomatic. He found that appellant's current symptoms would have likely occurred at some time due to his degenerative disc disease. Dr. Alexander advised that appellant had returned to his baseline lumbar condition and that his current symptoms were due to the natural progression of degenerative disc disease. He found that appellant had reached maximum medical improvement and did not need any other medical treatment. Dr. Alexander noted that appellant could work an eight-hour day with a 50-pound lifting restriction. He also attached a work restriction evaluation form setting forth particular work restrictions.

On July 5, 2007 the Office issued a proposed notice of termination of compensation. It found that the weight of the medical evidence, represented by Dr. Alexander's report, demonstrated that appellant no longer had any disability or residuals due to his accepted April 3, 1990 injury. The Office allowed 30 days for appellant to submit additional evidence. In response, appellant submitted a July 20, 2007 statement explaining that he disagreed with Dr. Alexander's report as it only reflected a "snapshot" of his medical condition of 10 years. He submitted evidence previously of record.

In a decision dated September 7, 2007, the Office terminated appellant's compensation benefits effective September 10, 2007, finding that Dr. Alexander's report established that the accepted lumbar conditions had resolved.

On October 9, 2007 appellant requested an oral hearing, which was held on January 10, 2008. In a November 16, 2007 report, Dr. Ralph D'Auria, a Board-certified physiatrist, received a history of the September 8, 1989 work injury and reported appellant's complaint of neck and low back pain. Based on x-rays of appellant's cervical and lumbar spine taken that day, he concluded that the cervical spine had diffuse degenerative changes most pronounced in the C5-6 area and limited range of motion. Dr. D'Auria also concluded that the lumbosacral spine had anterior and posterior degenerative changes most pronounced in the L1-S1 region and that the L5-S1 region was going into spontaneous fusion. He noted that appellant attributed his back pain to the September 8, 1989 work injury and that he should return for treatment as needed.

In a March 12, 2008 decision, an Office hearing representative affirmed the September 7, 2007 decision.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.[1] After it has determined that an employee has disability causally related to his federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.[2] The

[1] *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Fermin G. Olascoaga*, 13 ECAB 102, 104 (1961).

[2] *Vivien L. Minor*, 37 ECAB 541 (1986).

Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[3] 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, the Office must establish that the claimant no longer has residuals of an employment-related condition, which requires further medical treatment.[4]

ANALYSIS

The Office accepted that appellant sustained an employment-related low back strain, aggravation of low back syndrome and aggravation of a herniated disc at L5-S1 on April 3, 1990. It terminated his compensation benefits effective September 10, 2007. The Board finds that the Office met its burden to establish that appellant's accepted conditions had resolved.

On April 21, 2006 the Office requested that appellant submit updated medical evidence. Appellant submitted a December 15, 2004 report of Dr. Rowe and several medical reports and physical therapy notes already of record. Dr. Rowe noted that appellant had minimal tenderness in the lumbar spine with virtually a full range of motion. She also found normal strength in the muscles of the lower extremities. Thereafter, the Office referred him to Dr. Alexander for a second opinion evaluation.

In an October 12, 2006 report, Dr. Alexander examined appellant and reviewed his history. He diagnosed cervical and lumbosacral degenerative disc disease and concluded that appellant's employment-related condition had resolved. Dr. Alexander explained that the work-related aggravation of appellant's lumbar condition was temporary as demonstrated by the fact that he had been asymptomatic. He attributed appellant's present symptomatology to the underlying degenerative disc disease which was not employment related. Dr. Alexander advised that appellant had returned to a preinjury baseline lumbar condition and that his current symptoms were due to the natural progression of degenerative disc disease and to the April 3, 1990 work incident. He did not attribute any continuing condition to appellant's accepted work injuries. The Board finds that Dr. Alexander's report represents the weight of the medical evidence. The Office properly relied on his report in terminating appellant's benefits. Dr. Alexander's opinion is based on proper factual and medical history as he had a statement of accepted facts and his report contained an accurate summary of the relevant medical evidence. Furthermore, he analyzed this information in addition to his own findings on examination, including the results of diagnostic testing, to reach a reasoned conclusion regarding appellant's condition.[5]

[3] *T.P.*, 58 ECAB ___ (Docket No. 07-60, issued May 10, 2007); *Larry Warner*, 43 ECAB 1027 (1992).

[4] *E.J.*, 59 ECAB ___ (Docket No. 08-1350, issued September 8, 2008).

[5] *See Naomi Lilly*, 10 ECAB 560 (1959) (the opportunity for and thoroughness of examination, the accuracy and completeness of the doctor's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the doctor's opinion are factors which enter into the weight of an evaluation).

Appellant submitted a November 16, 2007 report from Dr. D'Auria, who found that appellant had lumbar degenerative disc changes and spontaneous fusion at the L5-S1 level. However, in addressing the cause of appellant's condition, Dr. D'Auria noted that appellant attributed his back pain to the 1989 work injury. This does not reflect his own independent opinion on causal relationship but instead is a reiteration of appellant's opinion.[6] Dr. D'Auria's report does not provide a full explanation as to how appellant's current back condition was caused or aggravated by either the 1989 or 1990 work injuries. There is no other medical evidence contemporaneous with the termination of appellant's benefits which supports that appellant has any continuing employment-related condition.

Consequently, the weight of the medical evidence rests with Dr. Alexander and establishes that appellant has no residuals of his accepted lumbar conditions. The Office met its burden of proof to terminate appellant's compensation benefits.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective September 10, 2007.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decisions dated March 12, 2008 and September 7, 2007 are affirmed.

Issued: April 6, 2009
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

[6] *See Lois E. Culver (Clair L. Culver),* 53 ECAB 412 (2002) (the opinion of a physician must be of reasonable medical certainty and must be supported by medical rationale explaining causal relationship).