

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

---

A.J., Appellant

and

**U.S. POSTAL SERVICE, BULK MAIL  
FACILITY, Philadelphia, PA, Employer**

)  
)  
)  
)  
)  
)

**Docket No. 11-984  
Issued: December 6, 2011**

*Appearances:*

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
ALEC J. KOROMILAS, Judge  
COLLEEN DUFFY KIKO, Judge

**JURISDICTION**

On March 11, 2011 appellant, through his representative, filed a timely appeal of a November 18, 2010 Office of Workers' Compensation Programs' (OWCP) merit decision terminating benefits. Pursuant to the Federal Employees' Compensation Act (FECA)<sup>1</sup> and 20 C.F.R. §§ 501.2(c)(1) and 501.3, the Board has jurisdiction to consider the merits of the case.

**ISSUE**

The issue is whether OWCP met its burden of proof to terminate appellant's medical benefits effective April 20, 2010 on the grounds that he had no residuals due to his accepted conditions.

On appeal, counsel argues that the report of Dr. Robert F. Draper, Jr., a Board-certified, orthopedic surgeon and second opinion physician, was not sufficient to meet OWCP's burden of proof as it was not based on an accurate factual or medical background and did not address the specific questions posed by OWCP.

---

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

This case has previously been on appeal. On April 16, 1999 appellant, then a 45-year-old mail handler filed a traumatic injury claim alleging that on April 14, 1999 he lost control of a tow motor which spun him around and drove him across a steel pole. He stated that he sustained a chest wall contusion when the steering arm of the tow motor struck him in the chest. Initial x-rays demonstrated no sternum fracture, but a moderately enlarged heart and relatively low lung volumes. Appellant returned to the emergency room on April 16, 1999 and his electrocardiogram was abnormal when compared with April 14, 1999 with a possible inferior infarction on or before April 14, 1999. He underwent an echocardiograph on April 27, 1999 which revealed mild aortic regurgitation and pulmonic regurgitation.

Appellant filed a notice of recurrence of disability on May 1, 1999 and stated that he returned to work on April 19, 1999 and experienced increased intensity of his chest pain on April 22, 1999. He sought treatment at the local emergency room. OWCP accepted appellant's claim for chest wall contusion on June 9, 1999.

By decision dated January 6, 2000, OWCP denied appellant's claim for compensation finding that the evidence did not establish any period of total disability for work due to his accepted chest wall contusion.

Appellant filed a recurrence of disability on August 16, 2000 and alleging that he stopped work on May 5, 2000 due to chronic pains in the upper gastrointestinal portion of his body. OWCP denied this claim on February 15, 2001. Counsel requested an oral hearing. Branch of Hearings and Review set aside OWCP's February 15, 2001 decision on June 2, 2001. OWCP again denied appellant's claim on October 26, 2001. A June 10, 1999 bone scan demonstrated increased tracer accumulation within the proximal body of the sternum and within the medial right clavicle. This report was interpreted as revealing fractures of the medial right clavicle and the proximal body of the sternum as well as degenerative changes of the shoulders, knees and ankles. Appellant requested reconsideration on October 11, 2002. By decision dated January 29, 2003, OWCP accepted the additional conditions of fractured clavicle and fractured sternum as a result of the April 14, 1999 employment injury. It also accepted recurrence of chest pain on February 18, 2000 and the diagnosis of costochondritis. However, OWCP did not accept that appellant was totally disabled beginning May 5, 2000 due to his accepted employment injuries. In a decision and order dated November 13, 2008,<sup>2</sup> the Board found that he had not established a recurrence of disability on May 5, 2000 and that he had not established a new injury on May 5, 2000. The facts and circumstances of the case as set out in the Board's prior decision are adopted herein by reference.

Following the Board's decision, Dr. Ghassem Kalani, a physician Board-certified in physical medicine and rehabilitation, continued to provide treatment and prescribe physical therapy for appellant's accepted conditions through December 7, 2009. Appellant reported pain between his right shoulder and numbness in his right hand. He also reported sternal pain. Dr. Kalani recommended another bone scan on December 23, 2009.

---

<sup>2</sup> Docket No. 08-1073 (issued November 13, 2008).

OWCP referred appellant for a second opinion evaluation with Dr. Draper on February 5, 2010. The statement of accepted facts included mention of the June 10, 1999 bone scan as well as other testing. In a report dated March 4, 2010, Dr. Draper reviewed medical evidence and performed a physical examination. He stated that appellant had a normal external examination of the chest, clavicles and manubulum. Dr. Draper found no bony deformities. He diagnosed contusion of the chest wall. Dr. Draper stated that the accepted conditions of fracture of the medial clavicle, fracture of the sternum and ribs were not supported by the imaging studies in the record. He suggested that additional medical records might support the accepted diagnoses. Dr. Draper found no evidence for a need for physical therapy and opined that appellant could return to his regular-duty work without restriction. He completed a work capacity evaluation and found no restrictions.

Dr. Kalani completed a report on February 22, 2010 listing appellant's accepted injuries of fracture of the medial clavicle, contusion of the chest wall and fracture of the proximal sternum as well as a complete rotator cuff tear on the right side and neurological disorders. He stated that when he last examined appellant on January 18, 2010 appellant presented with complaints of pain of his anterior chest and sternal region as well as tenderness in this area with difficulty breathing and popping sensation on breathing and shortness of breath. Dr. Kalani opined that appellant was symptomatic with these chronic injuries secondary to the accepted conditions and that the injuries limited his functional capacity.

In a letter dated March 7, 2010, OWCP proposed to terminate appellant's compensation benefits based on Dr. Draper's report.

By decision dated April 20, 2010, OWCP terminated appellant's medical benefits effective that date. Counsel requested an oral hearing on May 11, 2010. He submitted a report from Dr. Kalani dated April 5, 2010. In the April 15, 2011 report, Dr. Kalani diagnosed chronic injuries including fracture of the lateral clavicle and sternal fracture. He opined that appellant had residual symptomatology and residual injuries from his April 14, 1999 employment injury. Dr. Kalani stated that appellant remained disabled from his date-of-injury position and recommended additional physical therapy. He submitted a treatment note dated May 10, 2010 noting appellant's description of pain in his chest and sternal area as well as breathing problems.

Appellant testified at the oral hearing on September 10, 2010. He stated that he had pains in his chest and his shoulder. Dr. Kalani submitted additional notes dated June 21 and August 30, 2010 stating that appellant reported breathing problems as well as popping in his chest and sternal area. He listed his impression as unchanged.

By decision dated November 18, 2010, OWCP's hearing representative affirmed its decision terminating appellant's medical benefits.

## **LEGAL PRECEDENT**

Once OWCP accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.<sup>3</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.<sup>4</sup> 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.<sup>5</sup>

## **ANALYSIS**

OWCP accepted appellant's claim for chest wall contusion, fractured clavicle and fractured sternum as well as costochondritis. Appellant's attending physician, Dr. Kalani, continued to support appellant's medical residuals from his accepted conditions noting his complaints of chest and sternal pain as well as popping. OWCP referred appellant for a second opinion evaluation with Dr. Draper to determine whether appellant had any medical residuals of his accepted condition. On April 20, 2010 it terminated his medical benefits based on Dr. Draper's report finding that he had no medical residuals of the accepted conditions. OWCP bears the burden of proof to justify termination of benefits.

In his March 4, 2010 report, Dr. Draper reviewed medical evidence submitted by OWCP. He opined that the accepted conditions of fracture of the medial clavicle, fracture of the sternum and ribs were not supported by the imaging studies in the record. Although the statement of accepted facts specifically referenced the 1999 bone scan which was interpreted as demonstrating the accepted fracture, Dr. Draper did not mention this report or otherwise address the findings contained therein. He did suggest that perhaps there were additional medical records that were not submitted to him that might support the accepted diagnoses. The Board finds that this report is not based on a proper factual and medical background and cannot meet OWCP's burden of proof to terminate appellant's medical benefits. As Dr. Draper did not consider the medical evidence listed in the statement of accepted facts, the probative value of his report is seriously diminished.<sup>6</sup>

The Board finds that Dr. Draper's report is not sufficient to meet OWCP's burden of proof to terminate appellant's medical benefits.

## **CONCLUSION**

OWCP failed to meet its burden of proof to terminate appellant's medical benefits.

---

<sup>3</sup> *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

<sup>4</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990).

<sup>5</sup> *Id.*

<sup>6</sup> *Willa M. Frazier*, 55 ECAB 379 (2004).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 18, 2010 decision of the Office of Workers' Compensation Programs is reversed.

Issued: December 6, 2011  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board