United States Department of Labor
Employees' Compensation Appeals Board

E.M., Appellant	)	
and	)	**Docket No. 10-1838**
	)	**Issued: June 9, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Atlanta, GA, Employer	)	

Appearances:
Appellant, pro se
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 July 7, 2010 appellant filed a timely appeal from a January 7, 2010 merit decision of the Office of Workers' Compensation Programs. Pursuant to the Federal Employees' Compensation Act[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether the Office met its burden of proof to terminate appellant's medical and compensation benefits effective May 29, 2009.

FACTUAL HISTORY

On April 27, 2007 appellant, then a 59-year-old letter carrier filed a traumatic injury claim alleging that on April 2, 2007 he injured his low back when his postal vehicle was struck by another car while delivering mail. The Office accepted lumbar sprain, sprain of the left

[1] 5 U.S.C. §§ 8101-8193.

shoulder and left arm, right knee sprain, neck sprain and later expanded his claim to include bilateral knee sprain. Appellant did not stop work.[2]

Appellant was treated by Dr. Patricia Kinnebrew, an internist, on April 3, 2007 for injuries sustained in a work-related automobile accident on April 2, 2007. Dr. Kinnebrew diagnosed cervical, shoulder and lumbar strain and returned appellant to regular duty. In reports dated April 12 to 25, 2007, Dr. Tracy E. Nailor, a Board-certified pediatrician, diagnosed knee pain, lumbar strain and cervicalgia sustained in a work-related automobile accident. She noted that appellant could return to regular duty. From April 20 to July 31, 2007, appellant was treated by Dr. William Ross, Jr., a Board-certified orthopedist, for a musculoskeletal injury which occurred following a motor vehicle accident in April 2007. Dr. Ross diagnosed musculoskeletal deceleration trauma and multiple areas of musculoskeletal pain secondary to the lumbar back. He recommended anti-inflammatories and physical therapy. Dr. Ross returned appellant to limited duty. Appellant was also treated by Edward E. Cordovado, a chiropractor, from July 1, 2006 to May 28, 2008, for injuries sustained in a work-related motor vehicle accident. Dr. Cordovado noted x-rays of the cervical, thoracic and lumbar spine revealed loss of cervical curve, loss of motion segment integrity, spinal malposition/misalignments, pelvic torque/unleveling and disc wedge at L5. He diagnosed lumbar sprain, left shoulder and upper arm sprain, right knee and cervical sprain.

On July 18, 2008 the Office referred appellant to Dr. Sarveswar I. Naida, a Board-certified orthopedist, for a second opinion. In a July 17, 2008 report, Dr. Naida indicated that he reviewed the records provided and examined appellant. He noted that examination of the lumbar spine revealed full range of motion, no muscle spasm, straight leg raising test was negative bilaterally, no sensory or motor deficits in the upper and lower extremities, normal muscle strength in all groups and crepitus over the left knee and patella. With regard to the cervical spine, Dr. Naida noted minimal limitations on range of motion, no localized tenderness, normal motor and sensory examination of the upper extremities, reflexes were equal bilaterally with full range of motion of the shoulders bilaterally. Examination of the knees revealed tenderness over the patella. Dr. Naida diagnosed resolved cervical, lumbar, knee and shoulder strain and chondromalacia patella. He opined that there were no remaining objective findings from the April 2, 2007 injury of strained shoulder, bilateral knee strain, neck and lumbar strain and the left knee findings of chondromalacia patella were from a previous injury. Dr. Naida opined that the findings on x-ray and clinically of the neck and back were age-related spondylosis and not related to the industrial injury. He noted that appellant fully recovered from his April 2, 2007 work injury.

On August 18, 2008 the Office proposed to terminate compensation benefits on the grounds that Dr. Naida's report dated July 17, 2008 established no residuals of the work-related conditions.

[2] Appellant filed a claim for an occupational disease in May 2006 which was accepted by the Office for tear of the medial meniscus of the left knee, file number xxxxxx451. On August 20, 2007 he was involved in a work-related automobile accident which was accepted for cervical strain, file number xxxxxx541. These claims are not presently before the Board.

Appellant submitted reports from Dr. Kinnebrew dated June 27 and September 19, 2008 who treated him for persistent low back pain and diagnosed lumbar strain. Dr. Kinnebrew recommended physical therapy and returned appellant to light-duty work.

Appellant was treated by Dr. Joseph G. Saulsbury, a Board-certified anesthesiologist, from October 17, 2008 to February 23, 2009, for acute chronic back pain. Dr. Saulsbury diagnosed back pain and back strain and returned appellant to limited duty. On January 26, 2009 he noted appellant's complaints of continuing low back pain radiating into his legs. Dr. Saulsbury noted minimal tenderness at L2, L3, L4 and L5, normal sensation and motor examination, symmetric reflexes, negative bilateral leg raises with full range of motion. He diagnosed back pain and back strain and returned appellant to light-duty work. On February 5, 2009 Dr. Saulsbury noted that appellant had no improvement in his low back pain despite taking medication, participating in physical therapy and working within his restrictions. He diagnosed lumbar radiculopathy and lumbar disc degeneration. Dr. Saulsbury continued limited duty. In a February 23, 2009 report, he noted that appellant presented with neck and back pain from lifting parcels at work and diagnosed cervical and back strain. Dr. Saulsbury returned appellant to modified duty. A February 3, 2009 lumbar spine magnetic resonance imaging (MRI) scan revealed mild central leftward L5-S1 disc protrusion with slight annular tear causing nerve root compression and broad-based posterior disc protrusion at L4-L5 causing bilateral neural foraminal stenosis and mild nerve root compression bilaterally.

On February 12, 2009 appellant was treated by Dr. Neil J. Negrin, a Board-certified orthopedist, for back pain related to an April 2, 2007 work injury. Dr. Negrin noted limited lumbar spine range of motion and positive straight leg raises on the left. He diagnosed probable herniated nucleus pulposus at left L5-S1. In a physical activity status report dated February 23, 2009, Dr. Negrin returned appellant to regular duty on February 12, 2009. In a March 3, 2009 report, Dr. Chris A. Jarrett, a Board-certified orthopedist, treated appellant for left knee pain which appellant reported began four years prior after a fall at work. He noted tenderness of the medial femoral condyle, medial joint line, medial tibial plateau and the head of the fibula. Dr. Jarrett diagnosed pain in the joint of the lower leg.

On March 20, 2009 the Office requested that Dr. Saulsbury review Dr. Naida's report and comment on whether he concurred with Dr. Naida or whether appellant had residuals of his accepted injury and needed work restrictions. No additional evidence was received.

On April 23, 2009 the Office issued a notice of proposed termination of compensation benefits on the grounds that Dr. Naida's report dated July 17, 2008 established no residuals of the work-related lumbar sprain, sprain of the left shoulder and left arm, right knee sprain, neck sprain and sprain of the bilateral knees.

In a letter dated May 5, 2009, appellant disagreed with the notice of proposed termination and asserted that Dr. Naida's report and examination were superficial. He further asserted that he continued to have residuals of his work injury.

By decision dated May 27, 2009, the Office terminated appellant's compensation benefits effective May 29, 2009 for the accepted conditions of lumbar sprain, sprain of the left shoulder and left arm, right knee sprain, neck sprain and sprain of the bilateral knees on the grounds that

the weight of the medical evidence as established by Dr. Naida established that appellant had no continuing disability resulting from his accepted employment injuries.

On June 10, 2009 appellant requested an oral hearing which was held on October 14, 2009. He submitted reports from Dr. Kinnebrew dated September 19 and October 31, 2008, who treated him for a back injury which he reported occurred on September 17, 2008 when he was twisting and reloading trays of mail at work. Dr. Kinnebrew diagnosed low back pain and back strain and returned appellant to limited duty. He also submitted reports from Dr. Saulsbury, previously of record. On October 8, 2008 Dr. Francine Fields, a Board-certified family practitioner, noted treating appellant for lumbar pain from a September 17, 2008 injury. She diagnosed lumbar strain and noted that appellant was working limited duty. On October 24, 2008 Dr. Clinton Carter, Board-certified in emergency medicine, treated appellant for low back pain from a September 17, 2008 injury. He diagnosed back strain and back pain and returned appellant to work with restrictions. Dr. Negrin treated appellant on May 14, 2009 for back pain beginning after an August 20, 2007 injury. He noted findings and diagnosed herniated nucleus pulposus of the lumbar spine and opined that appellant reached maximum medical improvement. Dr. Negrin returned appellant to work with restrictions based on prior problems with his knee and a 40-pound lifting restriction for his back. On October 13 and December 8, 2009 Dr. Jarrett treated appellant for bilateral knee pain which began following a work-related motor vehicle accident. He diagnosed tear of the posterior horn of the meniscus. Dr. Jarrett opined that "it is likely that the meniscus tear resulted from the motor vehicle collision." He noted that conservative treatment failed. Appellant also submitted physical therapy notes.

In a decision dated January 7, 2010, the hearing representative affirmed the May 27, 2009 Office decision.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.[3] After it has determined that an employee has disability causally related to his or her 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.[4] The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition, which requires further medical treatment.[5]

[3] *Gewin C. Hawkins*, 52 ECAB 242 (2001); *Alice J. Tysinger*, 51 ECAB 638 (2000).

[4] *Mary A. Lowe*, 52 ECAB 223 (2001).

[5] *Id.; Leonard M. Burger*, 51 ECAB 369 (2000).

ANALYSIS

The Office accepted appellant's claim for work-related lumbar sprain, sprain of the left shoulder and left arm, right knee sprain, neck sprain and sprain of the bilateral knees. In June 2008, it referred appellant for a second opinion evaluation by Dr. Naida, an orthopedist. In his report dated July 17, 2008, Dr. Naida diagnosed resolved cervical, lumbar, knee and shoulder strain and chondromalacia patella. He noted examination of the lumbar and cervical spine revealed full range of motion, no sensory or motor deficits in the upper and lower extremities, normal muscle strength in all groups and crepitus over the left knee and patella. Dr. Naida opined that there were no remaining objective findings from the April 2, 2007 injury of strained shoulder, bilateral knee strain, neck and lumbar strain and noted that the left knee findings of chondromalacia patella were from a previous injury. He noted that x-ray and clinical findings of the neck and back were age-related spondylosis and not related to the work injury. Dr. Naida noted that appellant fully recovered from his April 2, 2007 work injury.

Appellant submitted reports dated January 26 to February 23, 2009 from Dr. Saulsbury who diagnosed lumbar radiculopathy, lumbar disc degeneration, cervical and back strain and returned appellant to light-duty work. A report from Dr. Negrin dated February 12, 2009 diagnosed probable herniated nucleus pulposus at left L5-S1. On February 23, 2009 Dr. Negrin returned appellant to regular duty on February 12, 2009. On May 14, 2009 he diagnosed herniated nucleus pulposus of the lumbar spine and noted appellant's work restriction due to his knee and back conditions. Drs. Saulsbury and Negrin did not specifically support continuing residuals of the April 2, 2007 work injury. This is significant as the record indicates that appellant has other injuries and conditions. The Board also notes that appellant's condition was not accepted for a herniated nucleus pulposus.

Also submitted was a March 3, 2009 report from Dr. Jarrett who treated appellant for left knee pain which began four years prior after a fall at work. Dr. Jarrett diagnosed pain in the joint of the lower leg. However, he attributes appellant's condition to an unrelated fall at work and not to the April 2, 2007 work injury. Other reports from Dr. Jarrett dated October 13 and December 8, 2009 noted appellant's treatment for knee pain which began following a work-related motor vehicle accident. Dr. Jarrett diagnosed tear of the posterior horn of the meniscus and opined that "it is likely that the meniscus tear resulted from the motor vehicle collision." The Board notes that Dr. Jarrett's report provides some support that appellant's meniscus condition is due to the work injury. However, the Office did not accepted a meniscus tear as being work related and Dr. Jarrett's opinion is insufficient to establish the meniscus tear was causally related to his April 2, 2007 employment incident.[6] In that report, Dr. Jarrett opined that "it is likely." However, at best, this report provides only speculative support for causal relationship as he qualifies his support by noting that the collision "likely" caused his condition.[7] Dr. Jarrett provided no medical reasoning to support his opinion on causal relationship. The

[6] *See G.A.*, Docket No. 09-2153 (issued June 10, 2010) (for conditions not accepted by the Office as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not the Office's burden to disprove such relationship).

[7] *See D.D.*, 57 ECAB 734 (2006) (medical opinions that are speculative or equivocal in character are of diminished probative value).

Board further notes that Dr. Jarrett failed to identify which automobile accident, April 2 or August 20, 2007, caused the knee injury. Therefore, this report is insufficient to meet appellant's burden of proof.

Appellant submitted reports from Dr. Kinnebrew dated September 19 and October 31, 2008, who treated him for a September 17, 2008 back injury which occurred at work. Dr. Kinnebrew diagnosed low back pain and back strain and returned appellant to limited duty. Similarly, a October 24, 2008 report from Dr. Carter treated appellant for a September 17, 2008 back injury at work and diagnosed back strain and back pain and returned appellant to work with restrictions. However, these physicians do not relate appellant's continuing condition to the April 2, 2007 injury but to a new injury that is not the subject of the claim before the Board.

Appellant also submitted physical therapy notes. The Board has held that treatment notes signed by physical therapist are not considered medical evidence as this provider is not a physician under the Act.[8]

The Board finds that the opinion of Dr. Naida is sufficiently well rationalized and based upon a proper factual background. These reports represent the weight of the evidence and establish that appellant's work-related lumbar sprain, sprain of the left shoulder and left arm, right knee sprain, neck sprain and sprain of the bilateral knees has resolved. Dr. Naida indicated that appellant did not have residuals from the conditions lumbar sprain, sprain of the left shoulder and left arm, right knee sprain, neck sprain and sprain of the bilateral knees and that he could return to her regular duties.

For these reasons, the Office met its burden of proof in terminating appellant's benefits for the accepted lumbar sprain, sprain of the left shoulder and left arm, right knee sprain, neck sprain and sprain of the bilateral knees.

On appeal, appellant asserts that his compensation was improperly terminated based on his physician's failure to identify which accident caused his knee injury. The Board notes that appellant's benefits were terminated because the weight of the medical evidence as set forth by Dr. Naida established his accepted injuries had resolved. As explained, the medical evidence contemporaneous with the termination of benefits does not support continuing residuals of the April 2, 2007 work injury.[9]

CONCLUSION

The Board finds that the Office has met its burden of proof to terminate benefits effective May 29, 2009.

[8] *See David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physical therapists are not competent to render a medical opinion under the Act); 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law).

[9] The Board notes that this decision does not affect appellant's right to pursue benefits for injuries sustained in any of this other claims before the Office.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 7, 2010 is affirmed.

Issued: June 9, 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