

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

D.G., Appellant)
and) Docket No. 11-232
TENNESSEE VALLEY AUTHORITY,) Issued: September 20, 2011
SEQUOYAH NUCLEAR PLANT, Daisy, TN,)
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
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 8, 2010 appellant filed a timely appeal of a May 13, 2010 merit decision of the Office of Workers' Compensation Programs' (OWCP) terminating compensation benefits. 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 the case.

ISSUE

The issue is whether OWCP met its burden of proof to terminate appellant's compensation and medical benefits effective January 16, 2010.

FACTUAL HISTORY

This case has previously been before the Board. On September 13, 1978 appellant, then a 29-year-old electrician, injured his low back rolling a bale of wire in the performance of duty.

¹ 5 U.S.C. § 8101 *et seq.*

OWCP accepted his claim for a lumbosacral strain. Appellant returned to work on November 2, 1978 and filed a claim for recurrence of disability beginning March 30, 1979. OWCP entered him on the periodic rolls on November 9, 1981. On September 14, 1983 it suspended appellant's compensation benefits for refusing to submit to a scheduled medical examination. On November 10, 1983 OWCP reentered him on the periodic rolls effective September 8, 1983. By decision dated July 27, 1990, it reduced appellant's compensation benefits based on his capacity to earn wages as salesperson. In a decision of June 29, 1992,² the Board reversed OWCP's decision.

Appellant's attending physician, Dr. George Z. Seiters, a Board-certified orthopedic surgeon, examined appellant on May 19, 1998 and diagnosed chronic lumbar strain and degenerative disc disease. Appellant submitted a work capacity evaluation dated April 19, 2004 from Dr. Seiters stating that he had not evaluated appellant since May 19, 1998 and providing appellant's permanent restrictions of no repetitive bending and no lifting over 50 pounds.

On April 10, 2007 OWCP requested additional medical evidence from appellant. Appellant did not respond and, on June 8, 2007, he was referred for a second opinion evaluation by Dr. Alexander N. Doman, a Board-certified orthopedic surgeon. In a letter dated July 12, 2007, OWCP proposed to suspend appellant's compensation benefits on the grounds that he failed to report for the medical examination scheduled on July 6, 2007. Appellant responded through his congressman and requested that he be scheduled for examination by a local physician due to difficulty traveling. OWCP scheduled transportation and an examination with Dr. Doman on September 4, 2007. In a report dated September 28, 2007, Dr. Doman noted that appellant was not currently under the care of a physician for his back condition and used occasional over-the-counter medication for pain relief only. He found that appellant's gait was normal with no signs of muscular atrophy. Dr. Doman performed a nerve conduction velocity test which showed changes consistent with a mild polyneuropathy and right L5-S1 radiculopathy. X-rays demonstrated moderated degenerative disc disease at L5-S1 with facet joint arthrosis from L4-S1. Dr. Doman diagnosed lumbar spondylosis L4-S1. In regard to the relationship between appellant's current diagnosis and his accepted employment injury, Dr. Doman stated, "The lumbar strain is a temporary self-limited condition. The chronic lumbar spondylosis represents the natural history of an underlying degenerative disorder." He opined that appellant had no disability remaining as a result of his work-related injury on September 13, 1978.

In a note dated December 11, 2007, Dr. Walter H. King, a Board-certified orthopedic surgeon, diagnosed chronic lumbosacral strain, lumbar spondylosis and chronic pain. He noted appellant's history of injury and prescribed medication. Dr. King reviewed a magnetic resonance imaging (MRI) scan dated January 2008 which demonstrated multiple level degenerative changes and spondylosis with multiple level foramen narrowing. He diagnosed multiple level degenerative spondylosis lumbar spine, bilateral pars defect and foramen stenosis lumbar spine as well as chronic pain.

In a letter dated July 17, 2008, OWCP requested additional information from Dr. King, who resubmitted his notes. Dr. King again examined appellant on October 2, 2008 and found no

² Docket No. 91-1897 (issued June 29, 1992).

atrophy and that deep tendon reflexes, sensation and muscle strength in the lower extremities were within normal limits. He diagnosed multi-level degenerative spondylosis lumbar spine, bilateral pars defect, foraminal stenosis and chronic pain syndrome. Dr. King recommended that appellant regulate his activities as tolerated and prescribed analgesics. On March 4, 2009 OWCP again requested that Dr. King address whether appellant's accepted condition was present and disabling and the extent of his work-related disability. Dr. King submitted a note dated July 28, 2009 stating that appellant believed that his condition was resolving and responding well to anti-inflammatories.

In a letter dated September 28, 2009, OWCP informed appellant that there was an unresolved conflict of medical opinion and referred him, a statement of accepted facts and list of specific questions, to Dr. Conrad Easly, a Board-certified orthopedic surgeon. In a report dated November 3, 2009, Dr. Easly reviewed appellant's medical history and performed a physical examination. He reviewed appellant's diagnostic studies and diagnosed acute lumbosacral strain resolved, mild to moderate degenerative disc/arthritis changes at L4-5 and L5-S1 as well as chronic mechanical low back pain without neurological deficits secondary to the degenerative disease. Dr. Easly opined that appellant's accepted lumbar strain had resolved, noting that appellant did not have any restrictions or residuals due to his accepted employment injury. He noted that appellant's degenerative changes were not a direct result of the September 13, 1978 employment injury. Dr. Easly stated, "The subjective complaints are consistent with someone experiencing chronic low back pain relating to the aging process, but not related to an acute lumbosacral strain that occurred [31] years ago."

In a letter dated December 15, 2009, OWCP proposed to terminate appellant's compensation and medical benefits on the grounds that the weight of the medical evidence established that his injury-related disability and residuals had ceased.

Appellant disagreed with Dr. Easly's conclusions in a letter received on January 12, 2010. Dr. Easly submitted a note from Dr. King dated January 4, 2010, which stated that appellant reported chronic pain and that appellant believed that his back pain was directly related to his 1978 employment injury. Dr. King diagnosed chronic lumbosacral strain and lumbar spondylosis.

By decision dated January 15, 2010, OWCP terminated appellant's compensation and medical benefits effective January 16, 2010.

Appellant requested a review of the written record on February 9, 2010. In a note dated February 15, 2010, Dr. King examined appellant and diagnosed chronic lumbosacral strain. He noted appellant's statements that his current condition and disability was due to his accepted employment injury in 1978. On March 8, 2010 Dr. King examined appellant and diagnosed, "multilevel degenerative spondylosis lumbar spine, pars defect L5-S1, radiculitis lower extremity, remote trauma; work[-]related injury 1978." Appellant also submitted a letter dated April 20, 2010 from, Georgetta Sue Langston, a friend, describing his symptoms.

By decision dated May 13, 2010, an OWCP hearing representative affirmed the January 15, 2010 termination decision, finding that the weight of the medical evidence rested with Drs. Easly and Doman. She noted that Dr. King diagnosed chronic strain and lumbar

spondylosis but never provided any discussion as to how these conditions were related to the original event. The hearing representative found that there was no conflict of medical opinion evidence, but that Drs. Easly and Doman found unequivocally that there was no basis to attribute any ongoing medical condition to appellant's accepted employment injury and were sufficient to meet OWCP's burden of proof.

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.³ After it has determined that an employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.⁴ Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁵ 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

OWCP accepted appellant's claim for a lumbosacral strain in 1978. There is no medical evidence in the record from May 19, 1998 until Dr. Seiters' April 19, 2004 report noting that he last examined appellant on May 19, 1998. Due to the absence of medical evidence OWCP referred appellant for a second opinion evaluation on September 28, 2007 with Dr. Doman, who performed electrodiagnostic testing and diagnosed lumbar spondylosis L4-S1. Dr. Doman opined that appellant's accepted lumbar strain was a temporary condition. He stated that the diagnosed chronic lumbar spondylosis was the result of appellant's underlying degenerative disorder. Dr. Doman concluded that appellant had no disability remaining as a result of his work-related injury on September 13, 1978.

Appellant provided notes from Dr. King, who first examined him on December 11, 2007. Dr. King diagnosed multiple level degenerative spondylosis lumbar spine, bilateral pars defect and foramen stenosis lumbar spine as well as chronic pain. He recommended that appellant regulate his activities as tolerated and prescribed analgesics. On January 4, 2010 Dr. King stated that appellant reported chronic pain that appellant believed was directly related to his 1978 employment injury. In a February 15, 2010 note, Dr. King reported appellant's statements that his current condition and disability was due to his accepted employment injury in 1978. On March 8, 2010 he examined appellant and diagnosed, "multi[-]level degenerative spondylosis lumbar spine, pars defect L5-S1, radiculitis lower extremity, remote trauma; work-related injury 1978.

³ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

⁴ *Id.*

⁵ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁶ *Id.*

The Board finds that there is no conflict of medical opinion evidence between Drs. Doman and King. Dr. King did not submit a medical opinion concluding that there was a causal relationship between appellant's current condition and his accepted employment injury. He merely restated appellant's assertions that his current back condition was due to his 1978 employment injury. The Board has held that the belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relationship.⁷ Dr. King's reports were not sufficiently detailed and well reasoned to create a conflict with Dr. Doman's report which included diagnostic testing, findings of physical examination and a clear statement that appellant's current condition is not due to his accepted employment injury.

OWCP erroneously found a conflict of medical opinion evidence⁸ and declared Dr. Easly the impartial medical examiner entitling his report to special weight.⁹ The Board finds that the reports of Drs. Doman and Easly are sufficient to meet OWCP's burden of proof and terminate appellant's compensation benefits. In a November 3, 2009 report, Dr. Easly reviewed the statement of accepted facts and the medical records diagnosing acute lumbosacral strain resolved and mild to moderate degenerative arthritic changes at L4-5 and L5-S1 as well as chronic mechanical low back pain without neurological deficits secondary to the degenerative disease. He opined that appellant's accepted employment injury had resolved and that appellant's current condition and disability was not the result of the September 13, 1978 employment injury. Dr. Easly instead attributed appellant's current condition to the aging process rather than to an accepted lumbar strain 31 years in the past. He found that appellant had no residual of his lumbosacral strain and stated that after 31 years this condition had ceased. Dr. Easly further opined that appellant's current back condition was not due to the lumbar strain, but was instead as a result of the aging process. He noted that degenerative changes progressed with age. Both Drs. Easly and Doman reviewed the medical records and the statement of accepted facts. These physicians considered the results of diagnostic studies and independently reached the conclusion that appellant's current back condition and disability was not due to his accepted lumbar strain which was a self-limiting condition expected to resolve a few months after onset. Drs. Easly and Doman attributed appellant's current back condition to degenerative changes associated with the aging process.

The Board finds that the weight of the rationalized medical opinion evidence establishes that appellant no longer has medical residuals or disability due to his accepted employment injury.

⁷ *Lourdes Harris*, 45 ECAB 545 (1994).

⁸ When there are opposing reports of virtually equal weight and rationale, the case will be referred to an impartial medical specialist pursuant to section 8123(a) of FECA which provides that, 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 and resolve the conflict of medical evidence. 5 U.S.C. §§ 8101-8193, 8123; *M.S.*, 58 ECAB 328 (2007); *B.C.*, 58 ECAB 111 (2006). This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case. *R.C.*, 58 ECAB 238 (2006).

⁹ In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight. *Nathan L. Harrell*, 41 ECAB 401, 407 (1990).

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 10.607.¹⁰

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's compensation and medical benefits effective January 16, 2010 based on the reports of Drs. Easly and Doman.

ORDER

IT IS HEREBY ORDERED THAT May 13, 2010 decision of Office of Workers' Compensation Programs is affirmed, as modified.

Issued: September 20, 2011
Washington, DC

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

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

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

¹⁰ On appeal, to the Board appellant submitted additional new medical evidence. As OWCP did not review this evidence in reaching a final decision, the Board may not consider this evidence for the first time on appeal. 20 C.F.R. § 510.2(c)(1).