

claim for a lumbar sprain, lumbar radiculitis, disc displacement and an aggravation of degenerative disc disease. Appellant was unable to return to work and was placed on the periodic compensation rolls. He remained under the care of several physicians and eventually underwent an authorized L4-5 microdiscectomy on September 19, 2009, which Dr. Christopher J. DeWald, a Board-certified orthopedic surgeon, performed.

In a January 20, 2010 letter, Dr. DeWald provided an impression of acute herniated disc, disc degeneration and resulting reflex sympathetic dystrophy (RSD) in the lower extremities after multiple epidural steroid injections. He opined that appellant should resume treatment of his RSD through Dr. April Fetzer, a Board-certified physiatrist.² On February 23, 2010 appellant requested OWCP change his treating physician to Dr. Fetzer, which OWCP authorized in a March 9, 2010 letter.

In a February 17, 2010 report, Dr. Fetzer performed nerve conduction studies and electromyography on appellant's bilateral upper limbs. She noted there was mild right-sided sensorimotor ulnar neuropathy, entrapment at the elbow. No evidence of left ulnar or bilateral median entrapment neuropathy or bilateral cervical radiculopathy was found. In a May 10, 2010 report, Dr. Fetzer noted that appellant had a work-related injury occurring October 22, 2002 with lumbar surgery in September 2009. Appellant reported postoperative symptomatic improvement with a recurrence of pain in March 2010. Dr. Fetzer reviewed his medical record and noted examination findings. Appellant was found to have no clinical evidence of RSD on examination. An impression of bilateral lower limb pain with hypoesthesia, subjective status post L4-5 decompression discectomy and history of RSD was provided. Dr. Fetzer noted the results of appellant's February 12, 2010 MRI scan and indicated that based on that result and the absence of any physiologic findings on examination and only subjective findings, appellant would best be served in a pain management clinic. She opined that appellant did not need to be off work as his pain was subjective and no work restrictions were indicated. Dr. Fetzer advised that appellant would be referred for pain management.

In a June 18, 2010 report, Dr. Xiaoyuan Xie, a Board-certified anesthesiologist and pain specialist, noted that appellant's October 22, 2002 work injury occurred after lifting a heavy box and noted his medical treatment thereafter. He noted examination findings and provided impressions of chronic lower back pain and lower extremity radicular pain; status post laminectomy times two, failed back syndrome; evidence of bilateral lower extremity peripheral neuropathy; possible bilateral lower extremity complex regional pain syndrome; chronic bilateral upper extremity pain, rule out radicular pain; and possible bilateral lower extremity peripheral vascular disease. On June 29, 2010 appellant underwent an MRI scan of the lumbosacral spine and bilateral lower extremity noninvasive arterial examination. The MRI scan showed a stable appearance of mild lumbar spondylosis with disc degeneration along with postsurgical reactive fibrotic change. There was no conspicuous recurrent or residual disc herniation. In July 9 and August 17, 2010 reports, Dr. Xie noted the results of the diagnostic testing. On August 17, 2010

² In a February 9, 2010 report, Dr. DeWald noted that appellant reported complaints of pains in his arms and spasms since his work-related injury but stated that the symptoms had come and gone. He noted that a magnetic resonance imaging (MRI) scan showed bulging disc in cervical spine with no significant nerve root compression and no spinal stenosis. Dr. DeWald noted examination findings and recommended an electromyography (EMG).

he opined that appellant had radicular pain. Dr. Xie recommended more testing as well as treatment with a psychologist to address appellant's anger.

On September 17, 2010 OWCP issued a notice of proposed termination of compensation for wage-loss benefits. It proposed to terminate appellant's wage-loss compensation on the basis that the weight of the medical evidence, as represented by Dr. Fetzer's May 10, 2010 report, established that his pain was subjective and there was no need to be off work.

Following the notice of proposed termination, appellant submitted copies of reports and diagnostic studies already of record along with a September 7, 2010 report from Dr. Xie noting appellant's status. Dr. Xie noted that appellant's pain was a little better. He recommended that appellant continue psychotherapy and return in two months.

By decision dated October 20, 2010, OWCP terminated appellant's wage-loss benefits effective October 24, 2010. It found that the weight of the medical evidence remained with Dr. Fetzer's May 10, 2010 report. OWCP further noted that appellant's entitlement to medical treatment and a schedule award were not affected.

On October 25, 2010 appellant, through his attorney, disagreed with the decision and requested a telephonic hearing, which was held on February 10, 2011. Appellant stated that he was disabled and continued to have pain and weakness in his back. He also stated that he recently had a heart attack and developed a left shoulder condition.

New evidence received included an August 26, 2010 consultation report from Dr. Steven A. Kval, clinical psychologist, several prescription scripts, a September 29, 2010 letter from appellant to his attorney. Dr. Kval noted treating appellant for psychological pain management. He indicated that appellant's condition arose from several factors including the work injury and subsequent chronic pain conditions. Dr. Kval's assessments included pain, depressive and anxiety disorders.

By decision dated May 2, 2011, an OWCP hearing representative affirmed the termination decision.

LEGAL PRECEDENT

Once OWCP has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.³ Having determined that an employee has a disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.⁴

³ *Bernadine P. Taylor*, 54 ECAB 342 (2003).

⁴ *Id.*

ANALYSIS

OWCP accepted that appellant sustained a lumbar sprain, lumbar radiculitis, disc displacement and an aggravation of degenerative disc disease. It also authorized an L4-5 microdiscectomy. OWCP terminated appellant's wage-loss compensation benefits based on the opinion of Dr. Fetzer, appellant's attending physician, who opined, in her May 10, 2010 report, that appellant need not be off work because his pain was subjective. She advised that appellant had no work restrictions.

In her May 10, 2010 report, Dr. Fetzer concluded that appellant was not totally disabled. She based her opinion on the results of appellant's February 12, 2010 MRI scan in conjunction with the absence of any physiologic findings on examination and only subjective findings. The Board has carefully reviewed the opinion of Dr. Fetzer and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Fetzer provided a thorough factual and medical history and accurately summarized the relevant medical evidence.⁵ She provided sufficient medical rationale for her opinion that appellant could return to work with no restrictions by explaining that her evaluation of appellant, including the findings of a comprehensive physical examination, showed that appellant's pain was subjective with no physiological basis. The medical evidence from Dr. Xie and Dr. Kval, while supporting that appellant had pain, failed to provide any opinion as to whether such pain arose from the work-related conditions and was disabling. Thus OWCP properly relied upon Dr. Fetzer's opinion that appellant was no longer disabled and had no work restrictions to terminate appellant's wage-loss benefits.

While appellant's counsel argues the decision is contrary to fact and law, the medical evidence fails to support any disability due to the accepted condition. 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 appellant's wage-loss compensation effective October 24, 2010 on the grounds that he no longer had any disability causally related to his accepted employment-related injuries.

⁵ See *Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated May 2, 2011 is affirmed.

Issued: April 11, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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