

On appeal, appellant's counsel contended that OWCP failed to adjudicate the consequential emotional condition and that the report of the impartial medical examiner is not sufficiently rationalized to support the termination of benefits.

FACTUAL HISTORY

On July 20, 2009 appellant, then a 43-year-old paralegal specialist, filed a traumatic injury claim alleging that while he was moving some light boxes, he placed the box on the ground and that when he stood up he felt a sharp pain in his lower/middle back. He indicated that the pain was continuing and becoming worse over time. On October 7, 2009 OWCP accepted appellant's claim for lumbar sprain of the back. It paid wage-loss compensation and medical benefits.

Appellant received treatment from Dr. Paul Fleissner, a Board-certified family practitioner. In a March 9, 2010 report, Dr. Fleissner listed his impression as chronic thoracic back pain after recent injury. He noted that appellant had degenerative disc disease of the thoracic back and low back pain and failed low back surgery. Dr. Fleissner continued to keep appellant off work. In an April 23, 2010 work capacity evaluation, he indicated that appellant was permanently totally disabled. In a May 22, 2010 report, Dr. Fleissner noted that appellant initially developed an injury to his thoracic back after lifting and repetitively stacking communication units while on the job on July 20, 2009. He detailed his continuing treatment of appellant. Dr. Fleissner opined that appellant had significant thoracic back pain; that his thoracic back pain, if not caused by, was significantly aggravated by the chronic lumbar back pain and decreased mobility; that appellant will not be able to successfully return to gainful employment based on his ongoing thoracic pain and his chronic lumbar pain; and that appellant will require lifelong supportive care in the form of pain management and perhaps other treatments for the thoracic and lumbar back pain and disc disease.

On May 6, 2010 OWCP referred appellant to Dr. David L. Hoversten, a Board-certified orthopedic surgeon, for a second opinion. In a June 8, 2010 report, Dr. Hoversten opined that the acute strain of degenerative discs in appellant's thoracic spine was a temporary aggravation and that this aggravation would probably have bothered him for a period of two months, at which point he would have returned to his previous capacity. He believed that appellant could return to his position as a paralegal specialist. Dr. Hoversten opined that further medical treatment was necessary and appropriate, but that appellant's complaints of pain in the thoracic back are of degenerative, aging and weight origin.

Due to the conflict between Dr. Fleissner and Dr. Hoversten with regard to appellant's ability to work, on September 8, 2010 OWCP referred appellant to Dr. Loren Vorlicky, a Board-certified orthopedic surgeon, for an impartial medical examination. In an October 19, 2010 opinion, Dr. Vorlicky stated that appellant had degenerative disc disease of his thoracic spine and has symptoms consistent with that diagnosis. He opined that the work injury of July 20, 2009 temporarily aggravated the preexisting condition of degenerative disc disease of his thoracic spine. Dr. Vorlicky noted no evidence of any structural alteration of appellant's thoracic spine as a result of the injury of July 20, 2009. He also noted that appellant had a preexisting condition of his lumbar spine and had a successful L4 to sacrum fusion with continued low back pain as well as a preexisting condition of degenerative disc disease of the lumbar spine. Dr. Vorlicky opined

that both of these diagnoses were temporarily aggravated by the July 20, 2009 work injury over a course of not more than 10 weeks. He noted that there may be further treatment for the thoracic and lumbar spine condition that preexisted the work event of July 20, 2009, but that this treatment would not be necessary or medically appropriate relative to the work injury of July 20, 2009. Dr. Vorlicky would allow appellant to return to work at the same level of work he was allowed to participate in prior to the July 20, 2009 injury. He indicated that appellant could return to the position of paralegal specialist.

In a May 19, 2010 report, Dr. Robert Laidlaw, a clinical psychologist, diagnosed appellant with pain disorder associated with both psychological factors and a general medical condition. He noted that the major stress on appellant was his inability to function and the impact of chronic pain and opined that he would be a good candidate for the pain management program. Dr. Laidlaw submitted subsequent reports dated through October 14, 2010. He discussed appellant's perceptions, noting that he felt that OWCP's referral physicians accused him of being dishonest and that he responded to these accusations with hurt and anger. Dr. Laidlaw noted that appellant was seeing him for psychological support and assistance in dealing with pain. By letter dated November 15, 2010, appellant's counsel contended that OWCP had not added an appropriate code accepting appellant's claim for a consequential emotional condition.

On November 19, 2010 OWCP issued a notice of proposed termination of appellant's medical benefits and wage-loss compensation.

By decision dated December 22, 2010, OWCP terminated appellant's medical and compensation benefits effective that date based on the report of Dr. Vorlicky. He declined to upgrade appellant's claim to include an emotional condition as Dr. Laidlaw did not provide evidence sufficient to establish that appellant's emotional condition was causally related to the accepted employment injury.

On December 27, 2010 appellant's attorney requested a telephonic hearing. However, the attorney contended that the case was not in posture for a hearing as a second opinion was needed with regard to the consequential emotional condition. Appellant's attorney later changed this request to a review of the written record.

By decision dated July 21, 2011, an OWCP hearing representative affirmed the December 22, 2010 termination of medical benefits and wage-loss compensation. The hearing representative further affirmed the December 22, 2010 decision as she found that appellant did not establish that he suffered from an emotional condition causally related to the accepted employment injury and that there were no grounds for further development.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.² Having determined that an employee has a disability causally related to his or her federal employment, OWCP may not terminate compensation

² *Curtis Hall*, 45 ECAB 316 (1994).

without establishing either that the disability had ceased or that it is no longer related to the employment.³ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.⁴ 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.⁵

Section 8123(a) of FECA provides in pertinent part: 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.⁶ In situations where there exist opposing medical reports of virtually equal weight and the rationale and 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 upon a proper factual background, must be given special weight.⁷

ANALYSIS -- ISSUE 1

OWCP accepted that, as a result of a July 20, 2009 employment injury, appellant suffered from a lumbar sprain of the back. It terminated his wage-loss compensation and medical benefits effective December 21, 2010 as it found that he had no residuals from this injury after that date. In support of this termination, OWCP relied on the opinion of Dr. Vorlicky, a Board-certified orthopedic surgeon who served as an impartial medical specialist.

OWCP properly determined that there was a conflict in the medical evidence between appellant's treating physician, Dr. Fleissner, and the second opinion physician, Dr. Hoversten with regard to whether appellant continued to have residuals from the July 20, 2009 lumbar sprain. In order to resolve the conflict, it properly referred appellant, pursuant to section 8123(a) of FECA, to Dr. Vorlicky for an impartial medical examination and an opinion on the matter. Dr. Vorlicky opined that appellant had a preexisting condition of degenerative disc disease of the thoracic spine and that the work injury of July 20, 2009 temporarily aggravated this condition, but concluded that the aggravation resolved no later than 10 weeks after the July 20, 2009 employment injury. He explained that there was no evidence of any structural alteration of appellant's thoracic spine as a result of the July 20, 2009 employment injury. Dr. Vorlicky stated that it was likely that appellant would still need medical treatment, but that this treatment would not be related to the July 20, 2009 injury. He further indicated that appellant could return to work as a paralegal specialist. The Board finds that Dr. Vorlicky provided a comprehensive, well-rationalized opinion in which he clearly advised that any residuals of the accepted conditions had resolved. Dr. Vorlicky's opinion is entitled to the special weight accorded an

³ *Jason C. Armstrong*, 40 ECAB 907 (1989).

⁴ *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

⁵ *Calvin S. Mays*, 39 ECAB 993 (1988).

⁶ 5 U.S.C. § 8123(a).

⁷ *T.H.*, Docket No. 11-996 (issued January 10, 2012); *Jack R. Rmith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

impartial examiner and constitutes the weight of the medial evidence.⁸ Accordingly, OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits.

LEGAL PRECEDENT -- ISSUE 2

It is an accepted principle of workers' compensation law that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment unless it is the result of an independent intervening cause.⁹ The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.¹⁰

ANALYSIS -- ISSUE 2

Appellant, through counsel, contends that benefits should not have been terminated as there was a consequential emotional condition. He has not submitted evidence to establish that his emotional condition was causally related to the July 20, 2009 employment injury. Although Dr. Laidlaw diagnosed appellant with pain disorder associated with both psychological factors and medical condition, he did not reach an independent conclusion correlating this condition with the July 20, 2009 employment injury. In his reports, he stated that appellant believed that his emotional condition was causally related to the July 20, 2009 employment injury, but Dr. Laidlaw fails to clearly address the issue of causal relationship.

OWCP has not accepted appellant's claim for a consequential emotional condition. Where a claimant claims that a condition not accepted or approved by OWCP was due to his employment injury, he bears the burden of proof to establish that the condition is causally related to the employment injury through the submission of rationalized medical evidence.¹¹ The Board finds that the medical evidence is insufficient to discharge appellant's burden to establish that he sustained an emotional condition as a consequence of the accepted lumbar sprain of the back.¹²

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 compensation and medical benefits effective December 21, 2010 on the grounds that he no

⁸ See *T.B.*, Docket No. 11-1154 (issued December 16, 2011); *Sharyn D. Bannick*, 54 ECAB 537 (2003).

⁹ See *S.M.*, 58 ECAB 166 (2006); *Carlos A. Marrero*, 50 ECAB 117 (1998).

¹⁰ A. Larson, *The Law of Workers' Compensation* § 10.01 (2005); *Charles W. Downey*, 54 ECAB 421 (2003).

¹¹ *JaJa K. Asaramo*, 55 ECAB 200, 204 (2004).

¹² *F.H.*, Docket No. 10-1267 (issued March 7, 2011).

longer had residuals from his July 20, 2009 employment injury. The Board further finds that he did not establish that he sustained a consequential emotional condition.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 21, 2011 is affirmed.

Issued: April 3, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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