

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

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**D.M., Appellant**

**and**

**U.S. POSTAL SERVICE, NORTHERN  
WESTERN NEW JERSEY PERFORMANCE  
CLUSTER, Newark, NJ, Employer**

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**Docket No. 11-1856  
Issued: April 3, 2012**

*Appearances:*  
*Thomas R. Uliase, 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  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On August 9, 2011 appellant, through his attorney, filed a timely appeal from the May 9, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) terminating his compensation. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective July 10, 2007 on the grounds that he had no residuals of his November 12, 2004 work injury after that date.

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<sup>1</sup> 20 C.F.R. § 8101 *et seq.*

## **FACTUAL HISTORY**

OWCP accepted that on November 12, 2004 appellant, then a 51-year-old electronic technician, sustained a lumbosacral strain/sprain and right inguinal strain after he pulled out several pieces of mail which had been wedged in an advanced facer canceller system machine.<sup>2</sup> He stopped work for a period of time and then returned to light-duty work on a full-time basis working as operational maintenance and as a gatekeeper. Appellant received compensation for periods of disability.

The results of January 26, 2005 magnetic resonance imaging (MRI) scan testing of appellant's low back revealed mild posterior facet degenerative changes with mild bilateral L4-5 and L5-S1 neural foraminal stenosis. There was a slight L5-S1 left paracentral disc bulge without ventral thecal sac compression. No canal stenosis was seen and the paraspinal soft tissues were unremarkable.

Appellant received treatment for his medical condition from several physicians, including Dr. Marc C. Arginteanu, an attending Board-certified neurosurgeon.<sup>3</sup> On April 20, 2005 Dr. Arginteanu provided work restrictions for appellant including no lifting more than 20 pounds and no pushing or pulling more than 50 pounds.<sup>4</sup> On February 15, 2006 he indicated that physical examination revealed that appellant had tenderness in the mid lumbar spine with paraspinal spasms. Motor bulk and tone, motor strength and sensory examination of the back yielded normal results.

In a January 4, 2007 report, Dr. David Rubinfeld, a Board-certified orthopedic surgeon, who served as an OWCP referral physician, detailed appellant's factual and medical history, including his treatment for the November 12, 2004 work injury. He indicated that appellant currently complained of pain in his neck, back, groin and legs and intermittent numbness in the outer part of his arms and legs. Appellant also asserted that he had difficulty in moving his legs and arms and engaging in walking, bending and lifting. Dr. Rubinfeld noted that physical examination revealed that appellant had full range of motion in his shoulders, elbows, hands, hips, knees and ankles. The cervical spine had a full range of motion with no vertebral tenderness or muscle spasm. Dr. Rubinfeld stated that appellant's thoracolumbar spine showed some restriction of motion with no vertebral tenderness or muscle spasm. Appellant's motor functions were intact in the deltoid, triceps, biceps and forearm muscles, the intrinsic muscles of his hands and the quadriceps, hamstring, calf and extensor hallucis longus muscles. Dr. Rubinfeld stated that appellant's arm, forearm, thigh and leg circumferences were equally bilaterally. Straight leg raising was 90 degrees bilaterally, Lasegue's sign was normal bilaterally and reflexes were equal at the triceps, biceps, brachial radialis, knees and ankles. Dr. Rubinfeld stated that sensation was normal in the upper and lower extremities. Considering the results of his examination, he concluded that there were no objective findings of the accepted conditions of lumbosacral strain/sprain and right inguinal strain. Dr. Rubinfeld indicated that there were no

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<sup>2</sup> Appellant indicated that he felt a pulling sensation in his low back and groin.

<sup>3</sup> Appellant also participated in periodic physical therapy sessions.

<sup>4</sup> Dr. Arginteanu provided similar work restrictions on June 6, 2005.

objective findings on examination to support appellant's subjective complaints. He stated that appellant did not require any further medical treatment and that he could return to his regular work as an electronic technician on a full-time basis without restrictions.

In a March 19, 2007 report, Dr. Arginteanu indicated that appellant reported that, over the past year, he had pain in his low back radiating into his left leg which he described as "moderate and nondisabling." Appellant reported experiencing occasional weakness and numbness down in his left leg, but he currently did not have such symptoms. Dr. Arginteanu noted that on physical examination appellant was able to ambulate without difficulty. Evaluation of the lumbar spine revealed no deformity and no dysraphism. Dr. Arginteanu stated that the spinal mobility was limited to approximately 50 percent of normal flexion and 25 percent of normal extension. Lower extremity motor bulk and tone and lower extremity strength were normal. Dr. Arginteanu indicated that the sensory examination was normal and that all reflexes were normal. He stated that appellant had reached maximum medical improvement regarding physical therapy and posited that no further physical therapy was required. Regarding the possibility of surgery, Dr. Arginteanu noted, "He is refusing any surgical intervention and I think that he states his pain is too mild to warrant intervention and I think that is reasonable at this time." Appellant's employing establishment had asked Dr. Arginteanu to indicate whether the residuals of appellant's work-related diagnoses had resolved. On March 19, 2007 Dr. Arginteanu responded that all the residuals of appellant's back sprain have resolved.

In a May 22, 2007 letter, OWCP advised appellant that it proposed to terminate his compensation on the grounds that he ceased to have residuals of his November 12, 2004 work injury. It indicated that the termination was justified by the well-rationalized opinion of Dr. Rubinfeld. OWCP provided appellant an opportunity to submit evidence and argument challenging the proposed termination action.

Appellant submitted a May 29, 2007 report, in which Dr. Monica Mehta, an attending Board-certified physical medicine and rehabilitation physician, stated that he had been involved in a work-related injury on November 12, 2004 "with aggravation of pain on an off and on basis." Dr. Mehta indicated that examination of appellant's lumbar spine revealed limited flexion and diminished sensation in the L5-S1. Appellant had diminished limited cervical motion and diminished sensation in the C5-6 dermatome. He also complained of pain in the left knee with limited flexion. Dr. Mehta stated that a recent MRI scan study revealed the presence of a left paracentral disc bulge at L5-S1 with bilateral L4-5 and L5-S1 mild neural foraminal-narrowing.<sup>5</sup> She indicated that special studies also included electromyographic studies in the upper extremities which did not reveal the presence of any radiculopathy, but which did reveal the presence of L5-S1 radiculitis in the right leg and L5-S1 radiculitis in the left leg. Dr. Mehta diagnosed lumbosacral pain syndrome, cervical pain syndrome and left knee internal

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<sup>5</sup> The record contains the results of May 3, 2007 MRI scan testing of appellant's back.

derangement and stated, “The lumbosacral pain syndrome is aggravated due to the repetitive trauma sustained while at work.” She further stated:

“I do believe [that] the complaints are secondary to injuries sustained and aggravated at work. Kindly, please therefore authorize the treatments to the lumbar spine, cervical spine and the left knee.

“We will be performing a work hardening program as well as a functional capacity evaluation to evaluate the return to work status (the light duty or regular duty)... He is worried because he has been terminated from his job which is in my opinion unacceptable given the fact that his injuries were indeed aggravated during the trauma sustained while at work.”

In a July 10, 2007 decision, OWCP terminated appellant’s wage-loss compensation and medical benefits effective July 10, 2007 on the grounds that he had no residuals of his November 12, 2004 work injury after that date. It indicated that the May 29, 2007 report of Dr. Mehta did not show that he had continuing work-related residuals.

Appellant requested reconsideration and submitted a May 7, 2008 initial consultation report of Dr. Mark Filippone, an attending Board-certified physical medicine and rehabilitation physician, who stated that appellant complained of pain in the right low back radiating into the right groin, right testicle medial aspect of the right thigh and calf and medial right malleolar area. Dr. Filippone noted that on physical examination pinprick sensation was diminished over the anterior lateral aspect of the right thigh from the groin to the knee and from the anterior thigh to the back of the right thigh. There also was decreased sensation over the mid to distal anterior aspect of the right thigh, the medial aspect of the right calf, the posterior lateral aspect of the right thigh and calf and the medial and lateral aspect of the right foot. Dr. Filippone stated that appellant was last able to work on April 16, 2007 but was now totally disabled. He noted in the diagnosis portion of the report, “Lumbosacral radiculitis, rule out lumbosacral radiculopathy directly and solely the result of injuries sustained while at work for the [employing establishment].” Dr. Filippone indicated that appellant needed electromyogram and nerve conduction velocity studies of his legs in order to identify any spinal nerve entrapment and to otherwise evaluate the neurological condition of his legs.

In an August 22, 2008 report, Dr. Filippone discussed his May 7, 2008 report and indicated that he had reviewed the January 4, 2007 report of Dr. Rubinfeld. He repeated his prior assessment that appellant’s radiculitis condition was directly and solely the result of injuries sustained while at the employing establishment. Dr. Filippone stated:

“On my examination of this [appellant], I find abnormalities of reflexes sensation and manual muscle testing. I find motor deficits and I also find neurologic deficits. Because of my findings on physical examination, I am in total disagreement with the findings of Dr. Rubinfeld as stated in his aforementioned narrative report.

“As stated in page two, paragraph two of my consultation report of May 7, 2008, I reviewed [appellant’s] narrative report as to the nature and extent of his work as an electronics technician and came to the conclusion that he cannot do his work.”

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“In my professional medical opinion, [appellant’s] aforementioned abnormalities and disability are directly and solely the result of the low back injuries sustained while at work for the [employing establishment] on November 12, 2004.”<sup>6</sup>

In a May 9, 2011 decision, OWCP denied modification of its July 10, 2007 decision noting that the reports of Dr. Filippone were of limited probative value on the relevant issue of the present case.

### **LEGAL PRECEDENT**

Once OWCP has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>7</sup> It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.<sup>8</sup> After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that he or she had an employment-related disability which continued after termination of compensation benefits.<sup>9</sup> The opinion of a physician on a medical matter must be based on a complete and accurate factual and medical background, must be one of reasonable medical certainty and must be supported by medical rationale.<sup>10</sup>

### **ANALYSIS**

OWCP accepted that on November 12, 2004 appellant sustained a lumbosacral strain/sprain and right inguinal strain after he pulled out several pieces of mail which had been wedged in a postal machine. Appellant stopped work for a period of time and then returned to light-duty work on a full-time basis in operational maintenance and as a gatekeeper. OWCP terminated his wage-loss compensation and medical benefits effective July 10, 2007 on the grounds that he had no residuals of his November 12, 2004 work injury after that date. It found that the termination was justified by the January 4, 2007 opinion of Dr. Rubinfeld, a Board-certified orthopedic surgeon who served as an OWCP referral physician.

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<sup>6</sup> Appellant submitted numerous other reports of Dr. Filippone, including treatment notes and work restriction forms.

<sup>7</sup> *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

<sup>8</sup> *Id.*

<sup>9</sup> *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

<sup>10</sup> *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

In his January 4, 2007 report, Dr. Rubinfeld noted that physical examination revealed that appellant had full range of motion in his shoulders, neck, elbows, hands, hips, knees and ankles. Appellant's motor functions were intact in the deltoid, triceps, biceps and forearm muscles, the intrinsic muscles of his hands and the quadriceps, hamstring, calf and extensor hallucis longus muscles. Dr. Rubinfeld stated that appellant's arm, forearm, thigh and leg circumferences were equal bilaterally. Straight leg raising was 90 degrees bilaterally, Lasegue's sign was normal bilaterally and sensation was normal in the upper and lower extremities. Considering the results of his examination, Dr. Rubinfeld concluded that there were no objective findings of the accepted conditions of lumbosacral strain/sprain and right inguinal strain.

The Board has carefully reviewed the opinion of Dr. Rubinfeld 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. Rubinfeld's opinion provided a thorough factual and medical history and accurately summarized the relevant medical evidence. Moreover, Dr. Rubinfeld provided a proper analysis of the factual and medical history and the findings on examination, including the results of diagnostic testing and reached conclusions regarding appellant's condition which comported with this analysis.<sup>11</sup> He provided medical rationale for his opinion by explaining that appellant had extremely limited findings on examination and by noting that there were no objective signs of the accepted work injuries, a lumbosacral strain/sprain and right inguinal strain. Dr. Rubinfeld indicated that appellant's considerable subjective complaints were not supported by objective findings.

Before OWCP and on appeal, counsel alleged that there was a conflict in the medical opinion evidence between the opinion of Dr. Rubinfeld and the opinions of appellant's attending physicians, including the opinion of Dr. Mehta, a Board-certified physical medicine and rehabilitation physician.<sup>12</sup>

The record contains a May 29, 2007 report, in which Dr. Mehta asserted that appellant continued to have work-related residuals, but this report is of limited probative value regarding such residuals because she did not adequately explain her opinion.<sup>13</sup> She indicated that he had a lumbosacral pain syndrome that was "aggravated due to the repetitive trauma sustained while at work." In reference to the diagnosed conditions of lumbosacral pain syndrome, cervical pain syndrome and left knee internal derangement, Dr. Mehta stated, "I do believe [that] the complaints are secondary to injuries sustained and aggravated at work." The Board notes, however, that it has not been accepted that appellant sustained a work-related lumbosacral pain syndrome or any type of cervical or left knee condition on November 12, 2004. Dr. Mehta did not provide any detailed explanation of how the November 12, 2004 injury could have been related to the conditions she diagnosed. She suggested that appellant sustained a new

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<sup>11</sup> See *Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

<sup>12</sup> 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." 5 U.S.C. § 8123(a). When there are opposing reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a) of FECA, to resolve the conflict in the medical evidence. *William C. Bush*, 40 ECAB 1064, 1075 (1989).

<sup>13</sup> See *supra* note 10.

work-related injury after November 12, 2004 but she did not describe the work factors that could have caused such a new injury and did not identify medical evidence which would support this aspect of her opinion.

After OWCP's July 10, 2007 decision terminating appellant's compensation effective July 10, 2007, he submitted additional medical evidence which he felt showed that he was entitled to compensation after July 10, 2007 due to residuals of his November 12, 2004 work injury. This evidence included May 7 and August 22, 2008 reports of Dr. Filippone, an attending Board-certified physical medicine and rehabilitation physician. Before OWCP and on appeal, counsel argued that these reports created a conflict in the medical opinion evidence regarding the issue of continuing work-related residuals.

Given that the Board has found that OWCP properly relied on the opinion of Dr. Rubinfeld in terminating appellant's compensation effective July 10, 2007, the burden shifts to appellant to establish that he is entitled to compensation after that date. The Board has reviewed the additional evidence submitted by appellant and notes that it is not of sufficient probative value to establish that he had residuals of his November 12, 2004 employment injury after July 10, 2007.

In his May 7, 2008 report, Dr. Filippone reported that on physical examination appellant's pinprick sensation was diminished over the anterior lateral aspect of the right thigh from the groin to the knee and from the anterior thigh to the back of the right thigh. There also was decreased sensation over the mid to distal anterior aspect of the right thigh, the medial aspect of the right calf, the posterior lateral aspect of the right thigh and calf and the medial and lateral aspect of the right foot. In both his May 7 and August 22, 2008 reports, Dr. Filippone stated that appellant was last able to work on April 16, 2007 but was now totally disabled. He posited that the diagnosis of "lumbosacral radiculitis, rule out lumbosacral radiculopathy" was "directly and solely the result of injuries sustained while at work for the [employing establishment]." Dr. Filippone further indicated that he disagreed with the January 4, 2007 opinion of Dr. Rubinfeld.

The Board finds that Dr. Filippone's reports are of limited probative value regarding whether appellant had residuals of his November 12, 2004 work injury after the proper termination of his compensation effective July 10, 2007. OWCP did not accept that appellant sustained lumbar radiculitis due to his November 12, 2004 injury and Dr. Filippone has not adequately explained how the November 12, 2004 work injury could be related to such a condition. Dr. Filippone did not examine appellant until about 3½ years after the November 12, 2004 work injury. Given this gap in time, it is especially important that Dr. Filippone provide medical rationale linking the November 12, 2004 work injury to the radicular condition he first observed in May 2008. Therefore, appellant did not meet his burden of proof to show that he is entitled to wage-loss compensation or medical benefits due to his November 12, 2004 work injury after July 10, 2007.

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 and medical benefits effective July 10, 2007 on the grounds that he had no residuals of his November 12, 2004 work injury after that date. The Board further finds that, after this proper termination, he did not meet his burden of proof to show that he had residuals of his November 12, 2004 work injury after July 10, 2007.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 9, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 3, 2012  
Washington, DC

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

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

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