

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

N.F., Appellant)

and)

U.S. POSTAL SERVICE, SOUTH SHORE)
ANNEX, Staten Island, NY, Employer)

**Docket No. 12-95
Issued: August 1, 2012**

Appearances:

Alan J. Shapiro, 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, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 24, 2011 appellant, through his attorney, timely appealed the September 21, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied modification of a prior decision terminating benefits. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3 (2011), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant had any injury-related residuals on or after February 6, 2008.

¹ 5 U.S.C. §§ 8101-8193 (2006).

FACTUAL HISTORY

This case was previously before the Board.² On May 16, 2006 appellant, then a 49-year-old mail handler, sustained a right groin strain, lumbar sprain and herniated lumbar disc in the performance of duty.³ He received continuation of pay, followed by 19 months of wage-loss compensation. OWCP terminated compensation and medical benefits effective February 6, 2008. The termination was based on the November 8, 2007 report of Dr. Stanley Soren, a Board-certified orthopedic surgeon and impartial medical examiner (IME), who found that appellant's accepted conditions had resolved and he was able to resume his regular duties as a mail handler. Both the Branch of Hearings & Review and the Board affirmed OWCP's termination of benefits effective February 6, 2008.⁴

Following the Board's July 1, 2009 decision, appellant's counsel requested reconsideration before OWCP. Counsel's June 25, 2010 request was accompanied by a recent report from Dr. William N. Grant, a Board-certified internist. In his June 20, 2010 report, Dr. Grant attributed appellant's ongoing lower back and groin pain to his May 16, 2006 employment injury.

By decision dated August 30, 2010, OWCP found Dr. Grant's recent report insufficient to overcome the weight of the medical evidence as represented by the IME's November 8, 2007 findings. Consequently, it denied modification of its prior decision.

When the case was last on appeal, the Board set aside OWCP's August 30, 2010 decision and remanded the case for further review.⁵ The Board found that OWCP focused exclusively on Dr. Grant's June 20, 2010 report and neglected to consider other medical evidence it had received subsequent to the hearing representative's August 19, 2008 decision.

The Board's prior decision dated July 1, 2009 and its August 12, 2011 order remanding case are incorporated herein by reference.

On remand, OWCP reviewed the merits of the claim, including the medical evidence submitted after the hearing representative's August 19, 2008 decision it had previously overlooked.

At this juncture, the Board need not reiterate the relevant medical evidence as it existed at the time of the hearing representative's August 19, 2008 decision. That evidence was thoroughly

² Docket No. 11-13 (issued August 12, 2011); Docket No. 08-2460 (issued July 1, 2009).

³ On his May 16, 2006 Form CA-1, appellant indicated that he "bent down to pick up plate and felt a pull in lower back and right groin." OWCP accepted that he sustained injury on May 16, 2006 while "bending down to pick up [a] flat." Appellant previously sustained an employment-related traumatic injury on November 9, 2000, which OWCP accepted for aggravation of lumbar sprain (xxxxxx686).

⁴ Docket No. 08-2460 (issued July 1, 2009).

⁵ Docket No. 11-13 (issued August 12, 2011).

described in the Board's prior decision, which is incorporated herein. The Board will instead focus on the various items of evidence submitted after the August 19, 2008 decision.

Dr. John P. Reilly, a Board-certified orthopedic surgeon, saw appellant on July 22, 2008 regarding his lumbar spine. He noted that appellant was still having the same amount of pain and was still unable to work. Appellant's condition had neither improved nor worsened. Dr. Reilly advised appellant to continue taking extra-strength Tylenol and to follow up in one month's time.

On August 20, 2008 appellant had a follow-up examination with Dr. Joseph A. Suarez, a Board-certified orthopedic surgeon,⁶ who noted that appellant's lumbosacral spine remained symptomatic. Dr. Suarez characterized appellant's lumbar condition as chronic and permanent and further noted that he was unable to work.

Dr. Suarez saw appellant again on February 11, 2009. He provided work restrictions (OWCP-5c), treatment notes and an attending physician's form report (Form CA-20). Dr. Suarez indicated that appellant continued to experience lumbosacral spine pain as well as pain on range of motion. He again noted that this was a chronic problem, with positive straight leg raising and spasms in the paralumbar area. There was also evidence of right calf atrophy, but no neurological deterioration. Dr. Suarez indicated that appellant had a long history of lumbosacral spine problems without improvement. He diagnosed lumbosacral radiculitis (ICD-9 Code 724.4), which he attributed to appellant's employment.⁷ Dr. Suarez noted that appellant could not sit, stand or walk for more than 20 minutes without resting. He further noted that appellant could not perform his regular job. While the February 11, 2009 OWCP-5c identified certain work activities appellant could perform with limitations, Dr. Suarez' similarly dated CA-20 form noted that appellant was presently totally disabled and had been disabled since his May 16, 2006 employment injury.

Based on Dr. Suarez' February 11, 2009 findings, OWCP referred the claim to its district medical adviser (DMA) to determine whether appellant was entitled to a schedule award for any permanent lower extremity impairment. In a report dated June 1, 2009, the DMA, Dr. Henry J. Magliato, a Board-certified orthopedic surgeon, noted that there was insufficient information to rate appellant under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (2008).

The latest medical evidence was provided by Dr. Grant, who examined appellant on June 20, 2010. As previously noted, he attributed appellant's ongoing lower back and groin pain to his May 16, 2006 employment injury, which he characterized as a "lifting" incident involving a "heavy package." Dr. Grant noted that appellant currently still had constant symptoms of

⁶ Dr. Suarez initially examined appellant on May 17, 2006. He noted that appellant had injured himself at work on May 16, 2006 while lifting a metal plate. At the time, Dr. Suarez diagnosed acute lumbar strain and right groin strain. The Board previously reviewed several reports from Dr. Suarez.

⁷ The CA-20 form identified May 16, 2006 as the date of injury and the history of injury was noted as "lower back lumbar sprain, [four] herniated discs." Dr. Suarez checked the "yes" box on the form report indicating his belief that the condition found was caused or aggravated by an employment activity. He did not otherwise explain his opinion regarding causal relationship.

lower back and groin pain, which at times were so severe that he had to crawl out of bed. He also indicated that appellant's lower back and pelvic area pain had caused him to collapse several times. Dr. Grant concluded that appellant's symptoms of injury of right groin strain, lumbar strain and herniated disc were caused by his employment injury. He further noted that, prior to the employment injury, appellant had never experienced any lower back and pelvic discomfort.

By decision dated September 21, 2011, OWCP denied modification of its prior decision terminating wage-loss compensation and medical benefits effective February 6, 2008.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.⁸ Having determined that, an employee has a disability causally related to his 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.⁹ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.¹⁰ To terminate authorization for medical treatment, OWCP must establish that the employee no longer has residuals of an employment-related condition that require further medical treatment.¹¹ Once OWCP has properly modified or terminated benefits, the burden of reinstating benefits shifts to the employee.¹²

ANALYSIS

OWCP accepted that appellant sustained right groin strain, lumbar sprain and herniated lumbar disc in the performance of duty on May 16, 2006. Appellant received appropriate wage-loss compensation. Effective February 6, 2008, OWCP terminated compensation and medical benefits based on the IME's November 8, 2007 finding that appellant's accepted conditions had resolved and he was able to resume his regular duties as a mail handler. The Board previously affirmed OWCP's decision to terminate medical benefits and wage-loss compensation. The Board's July 1, 2009 decision was based on the record compiled as of August 19, 2008, which included the IME's November 8, 2007 report, as well as several subsequent reports from Dr. Suarez covering the period January through May 2008. Appellant's counsel has not presented any compelling arguments that would warrant revisiting the Board's July 1, 2009 decision regarding the weight of the medical evidence as it existed on or before August 19, 2008.¹³ Accordingly, the Board reaffirms OWCP's decision to terminate wage-loss

⁸ *Curtis Hall*, 45 ECAB 316 (1994).

⁹ *Jason C. Armstrong*, 40 ECAB 907 (1989).

¹⁰ *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

¹¹ *Calvin S. Mays*, 39 ECAB 993 (1988).

¹² *Joseph A. Brown Jr.*, 55 ECAB 542, 544 n.5 (2004).

¹³ Appellant's counsel did not submit a brief and his October 17, 2010 application for review (AB-1) merely noted that OWCP's September 21, 2011 decision was "Contrary to Fact and Law."

compensation and medical benefits effective February 6, 2008 based on the IME's November 8, 2007 report.

Because OWCP properly terminated benefits, the only remaining question is whether appellant has since demonstrated any employment-related residuals on or after February 6, 2008.¹⁴ The Board finds that the medical evidence received after August 19, 2008 does not establish that he continues to suffer from residuals of his May 16, 2006 employment injury.

Dr. Reilly's July 22, 2008 treatment notes did not include either a date of injury or history of injury. He also did not provide any examination findings or an opinion on causal relationship. Dr. Reilly merely noted that appellant's lumbar spine condition had neither improved nor worsened. Appellant reportedly continued to experience the same amount of pain and was still unable to work. Dr. Reilly did not offer a well-reasoned opinion regarding the extent of appellant's lumbar spine condition, nor did he specifically relate appellant's ongoing complaints to his May 16, 2006 employment injury. Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue.¹⁵ Dr. Reilly's July 22, 2008 treatment notes are insufficient to establish ongoing employment-related residuals. Dr. Suarez' August 20, 2008 treatment notes are similarly deficient. While he noted that appellant's lumbosacral spine remained symptomatic and he was unable to work, Dr. Suarez neglected to identify the date of injury or include a history of injury. Also absent were any physical examination findings or an opinion on causal relationship. Thus, Dr. Suarez' August 20, 2008 treatment notes will not suffice for purposes of establishing any post February 6, 2008 employment-related disability or residuals.

When Dr. Suarez examined appellant on February 11, 2009, he diagnosed lumbar radiculitis and noted that appellant was totally disabled and had been since May 16, 2006. While he checked the appropriate box on the report CA-20 form indicating that appellant's condition was employment related, Dr. Suarez did not provide an explanation for his opinion on causal relationship.¹⁶ Such an opinion must be supported by medical rationale.¹⁷ Absent appropriate medical rationale, Dr. Suarez' February 11, 2009 opinion is of limited probative value.

The DMA reviewed Dr. Suarez' February 11, 2009 reports and found that there was insufficient information to determine whether appellant had any permanent impairment of the

¹⁴ *Joseph A. Brown Jr.*, *supra* note 12.

¹⁵ See *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

¹⁶ Item number 8 on CA-20 form asks: "Do you believe the condition found was caused or aggravated by an employment activity?" The question is followed by a parenthetical directing the physician to "Please explain answer." Dr. Suarez checked the "Yes" box signifying a causal relationship, but he did not otherwise elaborate.

¹⁷ *Victor J. Woodhams*, *supra* note 15.

lower extremities under the A.M.A., *Guides* (6th ed. 2008). The Board finds that the DMA's June 1, 2009 report does not lend any support to appellant's claim of ongoing employment-related residuals.

Dr. Grant, who examined appellant on June 20, 2010, attributed his ongoing lower back and groin pain to his May 16, 2006 employment injury. When the case was last before the Board, OWCP had reviewed Dr. Grant's June 20, 2010 report and found it insufficient to warrant modification. The Board did not take issue with OWCP's consideration of Dr. Grant's report at the time. The Board remanded the case because OWCP had neglected to consider other new and pertinent evidence. On remand, OWCP again found Dr. Grant's June 20, 2010 report deficient. The Board similarly finds his report deficient. First, Dr. Grant mischaracterized the May 16, 2006 employment injury as a "lifting" incident involving a "heavy package." On appellant's CA-1 form, he reported having injured himself when he "bent down" to pick up a plate. OWCP accepted that he was injured while "bending over to pick up [a] flat." The accepted injury involved bending, not lifting a heavy package as reported by Dr. Grant. Second, Dr. Grant was apparently unaware that appellant previously injured his lower back while at work in November 2000. He noted that, prior to the May 16, 2006 employment injury, appellant "never had any lower back ... discomfort. Dr. Grant's opinion on causal relationship appears to have been based on an inaccurate and incomplete factual and medical background. It is also noteworthy that he did not provide any physical examination findings, nor did he reference any diagnostic studies. Under the circumstances, the Board finds that Dr. Grant's June 20, 2010 report is not well reasoned and it is insufficient to demonstrate any ongoing employment-related disability or residuals.

Based on the foregoing analysis, the Board finds that appellant has not established a basis for modifying OWCP's decision to terminate benefits effective February 6, 2008. Appellant has also failed to establish that he has any post February 6, 2008 employment-related disability or residuals.

CONCLUSION

OWCP properly terminated appellant's compensation and medical benefits effective February 6, 2008. The Board further finds that appellant failed to demonstrate any employment-related disability or residuals on or after February 6, 2008.

ORDER

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

Issued: August 1, 2012
Washington, DC

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

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees Compensation Appeals Board