

FACTUAL HISTORY

OWCP accepted that on December 7, 1979 appellant, then a 38-year-old carpenter, sustained a cervical and lumbar sprain and temporary aggravation of lumbar degenerative joint disease when he slipped and hurt his back at work. Appellant stopped work on December 28, 1979. OWCP paid appellant wage-loss compensation and medical benefits.²

In a September 14, 1984 medical report, Dr. Hugh G. Barnett, II, an attending Board-certified neurosurgeon, listed examination findings and advised that appellant had spondylolisthesis at L5-S1, a bulging disc at L4 and a history of degenerative cervical spine disease.

OWCP referred appellant to several physicians for a second opinion regarding his employment-related injuries. In a November 16, 1989 medical report, Dr. William L. Moffatt, Jr., a Board-certified orthopedic surgeon, noted a history of the December 7, 1979 employment injury. He listed essentially normal findings on physical examination with the exception of a mild limp on the right lower extremity, stiff straight lumbar spine, pain in the right low back and thigh and during range of motion testing and positive straight leg raising, Lesegue's and Faber's test results. Dr. Moffatt also listed essentially normal findings on neurological examination with the exception of tenderness over the L5 level on the right and the right sciatic notch. He reviewed x-rays of the lumbar and cervical spine. Dr. Moffatt diagnosed degenerative grade 2 spondylolisthesis at L4-S1, degenerative retrospondylolisthesis at L4-5, degenerative disc disease at L1-2 and moderately severe degenerative disc disease at C3-4, C4-5 and C5-6. He stated that appellant had an ongoing problem for the last 10 years which prevented him from returning to his previous job. Dr. Moffatt noted appellant's physical limitations and recommended vocational rehabilitation.

In a May 1, 2001 report, Dr. David A. West, a referral osteopath specializing in orthopedic surgery, obtained a history of the December 7, 1979 employment injuries and appellant's medical treatment. He listed essentially normal examination findings with the exception of limited range of motion of the lumbar spine and diminished deep tendon reflexes on the left patella. Dr. West diagnosed chronic mechanical low back pain with evidence of lumbar spondylolisthesis at L5-S1, bulging discs at L4-5 and a history of degenerative cervical spine disease. He advised that appellant's employment-related cervical and lumbar strains had resolved. Dr. West further advised that his preexisting lumbar spondylolisthesis condition was an ongoing natural progression of an underlying degenerative condition and it was not related to the accepted injuries. The condition had not changed since an earlier diagnosis that was made several years ago. Dr. West concluded that appellant could not return to his regular work duties, but he could work eight hours a day in a light-duty position with permanent physical restrictions.

In a November 5, 2009 report, Dr. Deborah S. St. Clair, a referral Board-certified orthopedic surgeon, obtained a history of the accepted employment injuries and appellant's

² In a June 7, 1982 decision, OWCP reduced appellant's compensation on the grounds that the constructed position of security guard represented his wage-earning capacity. In a December 7, 1984 decision, it denied his request for reconsideration of the June 7, 1982 wage-earning capacity determination. On October 1, 1985 OWCP denied modification of its wage-earning capacity determination.

medical treatment, family, social and employment background. She reported essentially normal examination findings with the exception of diminished range of motion of the neck, shoulders and lumbar spine and absent reflexes in the right and left knee. Dr. St. Clair diagnosed chronic pain related to the lumbar and cervical spine. She could not distinguish between degenerative disc disease and degenerative joint disease in the spine. Dr. St. Clair recommended further diagnostic testing. She concluded that appellant could not perform his regular work duties, but he could work four hours a day with permanent restrictions. On October 28, 2009 Dr. St. Clair reviewed a September 19, 2009 magnetic resonance imaging (MRI) scan of the lumbar spine and advised that it showed grade 1 to 2 spondylolysis with severe bilateral foraminal stenosis at L5-S1. At L4-5, there was retrolsthes with fairly migrated central disc extrusion/herniation. At L3-4, there was moderate multifactorial spondylosis with moderate to severe spinal canal and foraminal stenosis. These conditions were slightly less severe at L2-3 and L1-2. A September 19, 2009 cervical MRI scan showed roughly the same degree of spinal stenosis. Dr. St. Clair advised that the spondylosis was widespread and surgery would not help this condition, but the spinal stenosis problems were advanced and typically treated with surgical decompression with overall good results.

On March 25, 2011 OWCP referred appellant to Dr. James Warmbrod, a Board-certified orthopedic surgeon, for a second opinion. In an April 18, 2011 report, Dr. Warmbrod obtained a history of the December 7, 1979 employment injuries and appellant's medical background. He noted appellant's complaints of pain and weakness in his back that radiated down to his bilateral lower extremities and right foot which affected his ability to walk, stand and lay down. Dr. Warmbrod provided the results of his physical examination. He advised that although the October 19, 2009 MRI scans showed multiple findings, the accepted cervical spine/sprain had fully resolved as appellant had very few complaints regarding the spine. Dr. Warmbrod further advised that the accepted lumbar spine strain had fully resolved, noting that recovery for this condition occurred within three to six months at most. He stated that the accepted temporary aggravation of preexisting degenerative joint disease of the lumbar spine had resolved. Dr. Warmbrod related that appellant's current lumbar condition was the natural progression of his preexisting lumbar degenerative joint disease. He noted that aggravation of the preexisting lumbar degenerative joint disease should resolve within three to six months. Dr. Warmbrod advised that it was more medically probable that appellant's current condition was the natural progression of his underlying degenerative spine condition which was consistent with age rather than a work injury. He stated that it was possible to get chronic aggravation, but after 30 years, this had ceased and appellant's current conditions were the natural progression of his disease. Dr. Warmbrod advised that appellant had reached maximum medical improvement within six months of his accepted work-related injuries. Appellant had some chronic aggravation of his preexisting lumbar degenerative joint disease. He also had grade 1 to 2 spondylolisthesis and it was well accepted that this condition caused back pain and it could be a chronic condition. Dr. Warmbrod stated that it was entirely possible that this condition was chronically aggravated by appellant's accepted injuries. He concluded that appellant could not perform his regular work duties, but he could work eight hours a day in a light to sedentary position with physical restrictions that were a normal progression of his condition and age and not related to the accepted injuries.

On May 3, 2011 OWCP issued a notice of proposed termination of appellant's wage-loss compensation and medical benefits based on Dr. Warmbrod's medical opinion. Appellant was

advised that he had 30 days to submit additional evidence in response to the proposed termination.

In a May 17, 2011 letter, appellant disagreed with the proposed action.

In a June 9, 2011 decision, OWCP terminated appellant's wage-loss compensation and medical benefits effective June 10, 2011. It found that he failed to submit any medical evidence to outweigh the weight accorded to Dr. Warmbrod's opinion that his accepted conditions had resolved and he no longer had any disability causally related to his accepted employment-related injuries.

On November 1, 2011 appellant requested reconsideration. He submitted Dr. Barnett's September 14, 1984 report which was previously of record. In an August 26, 2011 report, Dr. Barnett noted the December 7, 1979 employment injury and appellant's medical background. He reported essentially normal findings on examination with the exception of appellant's decreased ability to flex and extend his back. Dr. Barnett diagnosed multilevel cervical and lumbar degenerative disc disease, lumbar stenosis and grade 1 to 2 anterior listhesis of 5 on S1 that was longstanding in nature without progression. Appellant also had organic heart disease and was one month status post a stent procedure. Dr. Barnett advised against back surgery because it would not be significantly helpful to him.

Appellant submitted the October 19, 2009 lumbar and cervical MRI scan reports.

In a January 4, 2012 decision, OWCP denied modification of the June 9, 2011 termination decision. It found that the medical evidence submitted by appellant was insufficient to establish that his current back condition was causally related to his December 7, 1979 employment injuries. OWCP further found that prior diagnostic test results and second opinions established that his spondylolisthesis was a preexisting condition that had not changed and was not causally related to his accepted injuries.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, OWCP may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.³ OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴

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

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

⁴ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁵ *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

establish that a claimant no longer has residuals of an employment-related condition that requires further medical treatment.⁶

ANALYSIS -- ISSUE 1

The Board finds that OWCP met its burden of proof to terminate appellant's compensation benefits as of June 10, 2011. OWCP accepted that appellant sustained a cervical and lumbar sprain and temporary aggravation of lumbar degenerative joint disease while in the performance of duty on December 7, 1979. Dr. Warmbrod, a second opinion physician whom OWCP relied upon in terminating appellant's compensation, addressed all of these accepted conditions and opined that they had resolved. He supported his opinion with medical rationale.⁷ Dr. Warmbrod explained that recovery from a lumbar sprain and aggravation of preexisting degenerative joint disease occurred within three to six months. He stated that appellant had reached maximum medical improvement within six months of the accepted injuries. Dr. Warmbrod related that it was possible to develop chronic aggravation but, after 30 years, this condition had ceased and appellant's current conditions were the natural progression of his disease which was consistent with his age and not related to the accepted injuries. He opined that he could return to work eight hours a day in a light to sedentary position with physical restrictions that were a normal progression of his degenerative condition and age and not related to the accepted injuries. Although Dr. Warmbrod opined that it was possible that appellant's preexisting grade 1 to 2 spondyloslithesis was chronically aggravated by the accepted injuries, he negated this theory by concluding that appellant's condition and any restrictions were attributable to the natural progression of his disease and age and not the accepted employment injuries. The Board finds that his report was comprehensive and based on an accurate factual and medical background. Dr. Warmbrod provided sufficient rationale in explaining that appellant's employment-related injuries had resolved and that any disability was due to the natural progression of the disease.

Further, Dr. West, another OWCP referral physician found that appellant's spondyloslithesis was an ongoing natural progression of an underlying degenerative condition and was not causally related to the accepted injuries. He stated that this preexisting condition had not changed since an earlier diagnosis many years ago. Moreover, Dr. West found that the accepted employment-related cervical and lumbar strains conditions had resolved and that appellant could return to work eight hours a day with permanent restrictions.

None of the other OWCP referral physicians of record, Dr. Moffatt and Dr. St. Clair, provided an opinion addressing whether appellant's current degenerative lumbar and cervical conditions were aggravated by the accepted work injuries. Dr. St. Clair opined that appellant could return to work four hours a day with permanent restrictions.

⁶ *Kathryn E. Demarsh, id.; James F. Weikel*, 54 ECAB 660 (2003).

⁷ Rationalized medical opinion evidence is medical evidence that is based on a complete factual and medical background, of reasonable medical certainty and supported by medical rationale explaining the opinion. *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

The Board finds that the weight of the medical evidence of record establishes that appellant has no employment-related disability or residuals and that any current condition or restrictions are solely due to the underlying condition. Accordingly, the Board finds that OWCP met its burden of proof to terminate compensation for wage-loss and medical benefits effective June 10, 2011.

LEGAL PRECEDENT -- ISSUE 2

Once OWCP properly terminates appellant's compensation benefits, the burden shifts to appellant to establish that, he has continuing disability after that date related to his accepted injury.⁸ To establish a causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background, supporting such a causal relationship.⁹ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.¹⁰

ANALYSIS -- ISSUE 2

The Board finds that appellant has not established that he has any continuing residuals or disability causally related to his work-related cervical and lumbar sprain and temporary aggravation of lumbar degenerative joint disease on or after June 10, 2011.

Following OWCP's termination of his compensation and medical benefits, appellant submitted Dr. Barnett's August 26, 2011 report who found that he had multilevel cervical and lumbar degenerative disc disease, lumbar stenosis, grade 1 to 2 anterior listhesis of 5 on S1. Dr. Barnett did not, however, provide any opinion addressing whether the diagnosed conditions were causally related to the accepted December 7, 1979 employment injuries. Moreover, he did not provide any opinion regarding appellant's disability for work due to the accepted December 7, 1979 employment injuries. The Board finds, therefore, that Dr. Barnett's report is insufficient to meet appellant's burden of proof.¹¹

Similarly, the October 19, 2009 diagnostic test results are insufficient to meet appellant's burden of proof. These reports do not contain any opinion addressing whether the diagnosed cervical and lumbar conditions are causally related to the December 7, 1979 employment injuries.¹²

⁸ See *I.J.*, 59 ECAB 408 (2008); *Franklin D. Haislah*, 52 ECAB 457 (2001).

⁹ *Id.*

¹⁰ *Paul Foster*, 56 ECAB 208 (2004); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹¹ Medical reports not containing rationale on causal relationship are entitled to little probative value. See *Jimmie Duckett*, 52 ECAB 332 (2001).

¹² *Id.*

As none of the medical evidence submitted by appellant after the termination of benefits, did not include a rationalized opinion regarding the causal relationship between his current cervical and lumbar conditions and the accepted work-related conditions, the Board finds that he did not establish that he had any employment-related residuals or disability after June 10, 2011.

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 properly terminated appellant's compensation effective June 10, 2011 on the grounds that he no longer had any residuals or disability causally related to his accepted employment-related cervical and lumbar sprain and temporary aggravation of lumbar degenerative joint disease. The Board further finds that appellant has failed to establish that he had continuing employment-related residuals or disability after June 10, 2011.

ORDER

IT IS HEREBY ORDERED THAT the January 4, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 9, 2012
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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