

FACTUAL HISTORY

On May 4, 2001 appellant, then a 47-year-old letter carrier, filed an occupational disease alleging that he developed degenerative cervical and lumbar spine disease due to lifting in the performance of duty. OWCP assigned File No. xxxxxx812 and accepted his claim for cervical spine muscle spasm on July 5, 2001.

Appellant filed a notice of traumatic injury on June 12, 2002 asserting that he sustained neck pain as a result of an automobile accident on that date. An x-ray report dated June 19, 2002 demonstrated mild degenerative disc disease at C4-5 with no fracture. On June 23, 2002 OWCP assigned File No. xxxxxx771 and accepted his claim for cervical strain.²

On November 5, 2008 appellant filed a notice of recurrence of disability alleging that the employing establishment withdrew his light-duty position in the National Reassessment Process. OWCP accepted this claim on January 12, 2009.

OWCP referred appellant for a second opinion evaluation on February 3, 2009. Dr. Joel A. Saperstein, a Board-certified orthopedic surgeon, in his report of February 19, 2009, stated that appellant's symptoms were minimal and that objective findings were lacking any evidence of significant objective orthopedic deficit of his neck or shoulder. He diagnosed chronic neck strain with degenerative arthritis of the spine. Dr. Saperstein opined that appellant had no residuals of the employment injury of 2000 and could return to full duty with no disability due to his accepted employment injuries. He noted that appellant could have subjective discomfort due to his age-related progression of degenerative arthritis.

In a letter dated April 24, 2009, OWCP proposed to terminate appellant's wage-loss compensation benefits and medical benefits based on Dr. Saperstein's report.

Appellant disagreed with Dr. Saperstein's findings. He submitted a note dated May 4, 2009 from his physician Dr. George P. Whitelaw, an orthopedic surgeon, stated that appellant could continue to perform modified duties lifting less than 10 pounds and avoiding repetitive stooping, twisting or bending.

By decision dated June 1, 2009, OWCP terminated appellant's compensation and medical benefits effective May 25, 2009 based on Dr. Saperstein's report.

Appellant requested reconsideration on June 12, 2009. He submitted a note from a chiropractor, Dr Allan German.

By decision dated August 18, 2009, OWCP reviewed the merits and denied modification of the June 1, 2009 termination decision.

Appellant requested reconsideration on August 12, 2010 and alleged errors in OWCP's termination decision as well as a conflict of medical opinion evidence between Drs. Whitelaw and Saperstein. Dr. Whitelaw completed a report on May 11, 2010. He reviewed appellant's

² OWCP combined the files under Master File No. xxxxxx812.

history of injury and medical treatment. Dr. Whitelaw diagnosed mild degenerative disc disease at C4-5 and stated that this condition was directed related to the June 12, 2002 employment incident.

By decision dated November 8, 2010, OWCP modified the date of termination to reflect that appellant received compensation benefits through June 7, 2009 but otherwise affirmed its prior decision.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.³ After it has determined that an employee has disability causally related to his or her federal employment, it may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.⁴ Furthermore, 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 establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁶

ANALYSIS -- ISSUE 1

OWCP accepted that appellant developed cervical spine muscle spasm in 2000. Appellant returned to light-duty work and sustained a second neck injury in 2002 due to a motor vehicle accident. It accepted this claim for cervical strain. Appellant's attending physician, Dr. Whitelaw continued to support the need for light-duty work to accommodate appellant's neck condition.

OWCP referred appellant for a second opinion evaluation with Dr. Saperstein, who completed a report on February 19, 2009 finding that appellant's symptoms were minimal. Dr. Saperstein concluded that there were no objective findings of orthopedic deficit in appellant's neck. He diagnosed chronic neck strain with degenerative arthritis of the spine. Dr. Saperstein opined that appellant's current condition was due to his preexisting degenerative condition and that appellant had no residuals or disability due to the accepted employment injury. He stated that appellant could return to full duty and required no further medical treatment.

The Board finds that Dr. Saperstein's report is entitled to the weight of the medical opinion evidence. Dr. Saperstein reviewed the factual and medical history and provided a comprehensive report finding that appellant's accepted cervical condition had resolved and that

³ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

⁴ *Id.*

⁵ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁶ *Id.*

his current symptoms and any disability were attributable to his degenerative condition which was not caused by his employment.

On May 4, 2009 Dr. Whitelaw stated that appellant could continue to perform modified duties lifting less than 10 pounds and avoiding repetitive stooping, twisting or bending. This note did not provide a history of injury, did not provide physical findings and did not offer any medical reasoning explaining why appellant's current condition was related to his employment injury. For these reasons this report is not sufficient to create a conflict with Dr. Saperstein's well reasoned report.

The Board finds that OWCP met its burden of proof to terminate appellant's compensation benefits based on Dr. Saperstein's report.

LEGAL PRECEDENT -- ISSUE 2

As OWCP met its burden of proof to terminate appellant's compensation benefits, the burden shifted to him to establish that he had disability causally related to his accepted employment injury.⁷ To establish a causal relationship between the condition, as well as any disability claimed and the employment injury, the employee must submit rationalized medical opinion evidence, based on a complete factual background, supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁸

ANALYSIS -- ISSUE 2

Following OWCP's termination of his compensation and medical benefits, appellant submitted a report dated May 11, 2010 from Dr. Whitelaw reviewing appellant's history of injury and medical treatment. Dr. Whitelaw opined that appellant's diagnosed condition of mild degenerative disc disease at C4-5 was directly related to the June 12, 2002 employment injury.

Dr. Whitelaw offered a detailed report and reached the opposite conclusion from Dr. Saperstein, finding that appellant's degenerative disc disease was related to his employment.

When there are opposing reports of virtually equal weight and rationale, the case will be referred to an impartial medical specialist pursuant to section 8123(a) of FECA which provides that, if there is disagreement between the physician making the examination for the United States

⁷ *George Servetas*, 43 ECAB 424, 430 (1992).

⁸ *James Mack*, 43 ECAB 321 (1991).

and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination and resolve the conflict of medical evidence.⁹ This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.¹⁰ As there is disagreement between appellant's physician Dr. Whitelaw and OWCP's second opinion physician, Dr. Saperstein, the Board finds that OWCP must undertake further development and refer this case to an impartial medical examiner to determine whether appellant's diagnosed degenerative condition was caused or aggravated by his accepted employment injury. After this and such further development as OWCP deems necessary, OWCP should issue an appropriate decision.

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's compensation benefits effective June 7, 2009. The Board further finds that he has submitted sufficient medical evidence of continuing disability and medical residuals to require additional development based on a conflict in medical opinion evidence.

⁹ 5 U.S.C. §§ 8101-8193, 8123; *M.S.*, 58 ECAB 328 (2007); *B.C.*, 58 ECAB 111 (2006).

¹⁰ *R.C.*, 58 ECAB 238 (2006).

ORDER

IT IS HEREBY ORDERED THAT the November 8, 2010 decision of the Office of Workers' Compensation Programs is affirmed in part, set aside in part and remanded for further proceedings consistent with this decision of the Board.

Issued: January 19, 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