

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

W.F., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Chester, PA, Employer**

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**Docket No. 11-1258
Issued: January 23, 2012**

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 27, 2011 appellant, through her attorney, filed a timely appeal from the December 27, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) affirming the termination of her monetary compensation benefits. Pursuant to the Federal Employees' Compensation Act¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

ISSUE

The issue is whether OWCP properly terminated appellant's monetary compensation benefits effective May 9, 2010 on the grounds that she no longer had any disability causally related to her accepted employment injuries.

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On July 28, 2000 appellant, then a 43-year-old mail carrier, was injured when a large box fell on the middle of her back. OWCP accepted the claim for a cervical sprain, lumbosacral sprain and later expanded it to include an aggravation of lumbar degenerative disc disease. Appellant returned to full-time limited duty for short periods before stopping work completely on March 13, 2001. OWCP placed her on its periodic compensation rolls.

In progress reports dated September 25, 2009 to January 26, 2010, appellant's attending physician, Dr. Dennis Ivill, a Board-certified physiatrist, listed spasms and trigger points in the cervical and lumbosacral paraspinal muscles with decreased range of motion in the cervical and lumbar spine. He provided a clinical impression of mechanical neck and low back pain secondary to traumatic myofascitis, traumatic fibromyalgia and status post work injury of July 28, 2000. Dr. Ivill provided appellant with bilateral cervical and lumbosacral paraspinal muscle trigger point injections.

The Office of the Inspector General (OIG) for the employing establishment conducted video surveillance of appellant on multiple dates from January 6 through February 2, 2010. According to the February 10, 2010 report of investigation, appellant was observed carrying numerous large bags and objects into her basement, carrying trash cans, carrying numerous objects of various sizes, bending for extended periods of time, and manually scraping ice from her car windshield for an extended period of time, even though her daughter was there to assist her. She was observed climbing and descending numerous steps, transporting her daughter to and from work, caring for a young child unassisted for a majority of the day, shopping and various other social activities.

On February 9, 2010 Dr. Ivill was interviewed by the OIG and reviewed the video surveillance of appellant. He noted that he had been her physician for 10 years and that she had been treated only by him for over six months. Dr. Ivill stated that appellant's chief complaint was constant neck and back pain which increased with prolonged physical activity. He stated that the pain was chronic and was not getting better or worse. Approximately, one fourth of the way through the video surveillance tape, Dr. Ivill stated, "These are all things I would n[o]t expect [appellant] can do based on the pain she is reporting. [Appellant] is not pausing for breaks, she is not guarding." Half way through the video surveillance tape, he, "[Appellant] does n[o]t seem to be taking any rest periods, which you would expect. She is not limping or guarding the way I would expect based on her complaints." Dr. Ivill stated, "Her behavior is inconsistent with her pain complaints."

In the February 9, 2010 Memorandum of Interview, Dr. Ivill stated that appellant could perform limited-duty work as well as her preinjury full-duty job. He stated that her "pain complaints are greater than her functional abilities" and that she "demonstrated no pain behavior as compared to her pain complaints." Dr. Ivill completed a duty status report, dated February 9, 2010, which indicated that appellant was able to resume regular full-time work as a parcel collection and delivery carrier. The duty status report stated that her job involved: intermittent lifting up to 35 pounds four hours a day; intermittent sitting four hours a day; continuous walking four hours a day; intermittent climbing one hour a day; intermittent bending/stooping two hours a day; intermittent pushing/pulling three hours a day; intermittent simple grasping two hours a day;

intermittent reaching above shoulder two hours a day; and intermittent driving six hours a day. In an official statement of February 16, 2010, Dr. Ivill verified his statements.

On March 26, 2010 OWCP issued a notice of proposed termination of appellant's monetary compensation benefits based on Dr. Ivill's medical opinion. Appellant was afforded 30 days to respond to this notice.

In an April 12, 2010 letter, appellant's counsel argued that the evidence used to terminate appellant's compensation was based on hearsay and that Dr. Ivill did not demonstrate his awareness of the full-duty requirements of her position.

In an April 13, 2010 report, Dr. Ivill reported appellant's complaints of pain, noting that it was constant and increased with activity and decreased with rest. He discussed the videotapes shown to him by the OIG and related that she stated that, even though she could perform those activities, she did them with great pain and had to use pain medications and rest. Findings on examination included spasm in the cervical and lumbosacral paraspinal muscles and decreased range of motion in the cervical and lumbar spine. An impression of mechanical neck and low back pain secondary to sprain/strain and aggravation of cervical and lumbar spondylosis status post work injury on July 28, 2000 was provided. Dr. Ivill ordered a functional capacity evaluation for permanent restrictions and validity testing.

By decision dated April 30, 2010, OWCP terminated appellant's monetary compensation benefits effective May 9, 2010 on the grounds that she no longer had any disability causally related to her accepted employment injuries. It found that the medical evidence submitted did not negate Dr. Ivill's February 9, 2010 statements regarding her ability to work or indicate that her condition had changed or were no longer valid. OWCP indicated that appellant remained eligible for medical treatment benefits of her accepted conditions.

On May 7, 2010 appellant's counsel requested a hearing before an OWCP hearing representative. The hearing was held by video conference on September 15, 2010. Appellant's attorney contended that the duty status report which Dr. Ivill signed was not accurate in regard to lifting capacity, as it only referred to 35 pounds yet letter carriers are required to lift up to 70 pounds. Appellant argued that, without an accurate job description, Dr. Ivill could not properly opine that she could return to full duty. She further argued that the functional capacity evaluation which Dr. Ivill recommended in April 2010 was necessary to determine work restrictions.

In a June 29, 2010 report, Dr. Ivill found decreased range of motion in the cervical or lumbar spine but no palpable spasm or trigger points. He continued to provide an impression of mechanical neck and low back pain secondary to sprain/strain and aggravation of cervical and lumbar spondylosis, status post work injury. Dr. Ivill indicated that appellant could work full-time modified duty per the functional capacity evaluation.

In an August 17, 2010 duty status report, Dr. Ivill noted that appellant was able to perform full-time regular work on February 16, 2010. The position requirements noted that she must lift/carry 7 pounds continuous and 35 to 70 pounds intermittent. In an August 20, 2010 statement, Dr. Ivill stated that he returned appellant to work on February 12, 2010 in full-duty

status. He indicated that the recently completed duty status report should clarify any discrepancies and reaffirmed his position.

Appellant submitted several statements. In a September 13, 2010 statement, she described her pain, work schedule and the work injury. In a September 14, 2010 statement, appellant stated that the duty status report from Dr. Ivill dated February 9, 2010 did not accurately reflect her job, which she described. In an October 14, 2010 statement, she stated that she last saw Dr. Ivill on April 13, 2011 and was amazed he could complete a duty status report without an examination. Appellant also stated that overtime was mandatory and she was not able to perform full duty. OWCP also received copies of ongoing treatment notes and therapy records.

By decision dated December 27, 2010, an OWCP hearing representative affirmed the April 30, 2010 decision, finding that OWCP properly terminated appellant's monetary compensation benefits based on a full-duty work release by Dr. Ivill, appellant's treating physician.

LEGAL PRECEDENT

Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation benefits.² After it has determined that an employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is 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

ANALYSIS

OWCP based its decision to terminate appellant's monetary compensation on the opinion of Dr. Ivill, appellant's treating physician. On February 9, 2010 Dr. Ivill reviewed video surveillance footage of her performing various activities involving standing, reaching, walking, bending, twisting and climbing. In medical statements of February 9 and 16, 2010 and in a duty status report of February 9, 2010, he opined that appellant's accepted work injuries no longer prevented her from returning to the date-of-injury position.

In an April 13, 2010 report, Dr. Ivill noted objective findings of spasms and decreased range of motion and ordered a functional capacity evaluation to determine permanent restrictions and validity testing. He did not indicate that his examination findings or the need for a functional capacity evaluation negated his earlier statements that appellant could perform her preinjury job at full duty.

² *Gewin C. Hawkins*, 52 ECAB 242 (2001); *Alice J. Tysinger*, 51 ECAB 638 (2000).

³ *Mary A. Lowe*, 52 ECAB 223 (2001).

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

Appellant's attorney contended both before OWCP and on appeal that Dr. Ivill did not demonstrate full awareness of the duty requirements of the job prior to his release of appellant to full duty. While Dr. Ivill's original work release of February 9, 2010 was for intermittent lifting up to 35 pounds for four hours a day, he properly noted the duty requirements of appellant's position in his August 27, 2010 duty status report and found that she could work full-time regular work in a position in which she must lift/carry 7 pounds continuously and 35 to 70 pounds intermittently. Additionally, in his August 20, 2010 statement, he reaffirmed his position that she was able to work full duty. This negates counsel's argument that Dr. Ivill was not aware that the position requires lifting up to 70 pounds.

The weight of the medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.⁵ Dr. Ivill treated appellant's accepted condition for many years. Upon viewing a video surveillance tape of her taken in January and February 2010, he observed that her pain complaints were greater than her functional abilities. Although appellant continued to have some objective residuals of her work-related conditions, Dr. Ivill opined that she was able to work full duty based on his care of her as well as his review of appellant's physical activity. Additionally, in his most recent work release form, Dr. Ivill certifies his full-duty release and that appellant can lift 35 to 70 pounds. The Board finds that his opinion is sufficiently detailed, well rationalized and based upon a complete and accurate history and therefore represents the weight of the medical evidence at the time OWCP terminated benefits. There is no other medical opinion of record which opposes Dr. Ivill's opinion that appellant cannot perform full-duty work. Accordingly, OWCP met its burden of proof to terminate appellant's monetary compensation effective May 9, 2010.

Counsel contends on appeal that OWCP's termination of compensation was premature and not based on a proper medical opinion. For the reasons noted herein, the Board finds that OWCP met its burden of proof to terminate appellant's monetary compensation.

CONCLUSION

The Board finds that OWCP has met its burden of proof to justify the termination of appellant's monetary compensation benefits effective May 9, 2010.

⁵ See *K.W.*, 59 ECAB 271 (2007); *Ann C. Leanza*, 48 ECAB 115 (1996).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs decision dated December 27, 2010 is affirmed.

Issued: January 23, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

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