

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

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J.F., Appellant)	
)	
and)	Docket No. 12-718
)	Issued: July 26, 2012
DEPARTMENT OF VETERANS AFFAIRS,)	
VETERANS MEDICAL CENTER, Hines, IL,)	
Employer)	
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Appearances:
Esther Ferrer, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 13, 2012 appellant, through his representative, filed a timely appeal from the January 27, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) terminating his compensation. Pursuant to the Federal Employees' Compensation Act¹ (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 September 30, 2011 on the grounds that he had no residuals of his September 13, 1976 work injury after that date.

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

OWCP accepted that on September 13, 1976 appellant, then a 39-year-old housekeeping aid, sustained a lumbosacral strain due to lifting a bag filled with linen. He stopped work on September 13, 1976 and received compensation for total disability.

The record reveals that appellant sought medical treatment for his back condition on a sporadic basis. In a March 12, 1999 report, Dr. Henry Rosler, an attending physician Board-certified in physical medicine and rehabilitation, provided a description of appellant's reported back symptoms and stated, "For all practical purposes, the patient is totally and permanently disabled for gainful employment."

In May 2008, OWCP referred appellant to Dr. David Lotman, a Board-certified orthopedic surgeon, for examination and an evaluation of whether he continued to have residuals of his September 13, 1976 work injury. In a June 5, 2008 report, Dr. Lotman indicated that appellant had nonwork-related degenerative disease of the lumbosacral spine and opined that his work-related lumbosacral strain had resolved.

In a November 13, 2008 decision, OWCP terminated appellant's wage-loss compensation and medical benefits effective November 23, 2008 based on the opinion of Dr. Lotman. On October 20, 2009 an OWCP hearing representative reversed OWCP's November 13, 2008 decision finding that Dr. Lotman's opinion was not based on a complete review of the medical evidence and that it did not contain adequate medical rationale in support of its conclusions.

In an April 20, 2011 note, an individual with an illegible signature stated that appellant was a patient with a history of low back pain. Although the top of the note contains the names of three physicians, it is unclear whether a physician signed the note.

In mid 2011, OWCP noted that there were gaps in the medical record due to the lack of follow-up care by appellant. It referred appellant to Dr. William Dinenberg, a Board-certified orthopedic surgeon, for an examination and opinion regarding whether he continued to have residuals of his September 13, 1976 work injury.

In a June 13, 2011 report, Dr. Dinenberg described appellant's September 13, 1976 work injury and detailed the treatment he received for his back condition. He noted that an April 17, 2007 magnetic resonance imaging (MRI) scan test revealed generalized disc bulges with facet joint arthritis and disc protrusions at L4-5 and L5-S1 and that a July 14, 2009 MRI scan test showed lumbar degenerative disc disease, disc bulging and herniation at L4-5 and stenosis at L5-S1.² Dr. Dinenberg indicated that physical examination revealed lumbosacral tenderness, intact sensation to light touch, 5/5 strength of the lower extremities and negative straight leg raising. Appellant exhibited considerable instability even when using a walker. Dr. Dinenberg diagnosed lumbar degenerative disc disease, lumbar stenosis and resolved lumbosacral strain.³

² Radiographic testing from 1990 had shown only mild degenerative changes at L4-5 and L5-S1.

³ Dr. Dinenberg also noted appellant's other medical conditions, including diabetes mellitus and coronary artery disease.

He determined that the September 13, 1976 lumbosacral strain had resolved and that the findings on examination showed that appellant no longer had residuals of this injury. Dr. Dinenberg concluded that appellant was symptomatic due to lumbar degenerative disc disease and stenosis, which were unrelated to the September 13, 1976 injury and opined that he was disabled on account of those nonwork-related conditions. He stated:

“The lumbar degenerative disc disease and lumbar spinal stenosis are not related to the lifting injury of September 13, 1976.... The claimant is currently symptomatic from the lumbar degenerative disc disease and lumbar spinal stenosis. Those findings were noted on MRI [scan] of July 14, 2009.... The claimant’s subjective complaints do correspond with the objective findings of degenerative disc disease and lumbar spinal stenosis. Again, I do not feel that the claimant currently is experiencing symptoms from his lumbar sprain/strain. I do feel this has resolved.”⁴

In an August 18, 2011 letter, OWCP advised appellant that it proposed to terminate his wage-loss compensation and medical benefits on the grounds that he ceased to have residuals of his September 13, 1976 work injury. It noted that the well-rationalized opinion of Dr. Dinenberg showed that the September 13, 1976 work injury had resolved. OWCP provided appellant 30 days to submit evidence and argument challenging the proposed termination.

In an August 30, 2011 letter, appellant objected to the proposed termination of his compensation noting that he had experienced serious back symptoms since he sustained the September 13, 1976 work injury.

In a September 30, 2011 decision, OWCP terminated appellant’s wage-loss compensation and medical benefits effective September 30, 2011 based on the opinion of Dr. Dinenberg.

Appellant requested a review the written record by an OWCP hearing representative. In a January 27, 2012 decision, OWCP’s hearing representative affirmed OWCP’s September 30, 2011 termination decision indicating that the weight of the medical evidence continued to rest with the opinion of Dr. Dinenberg.

LEGAL PRECEDENT

Under FECA, once OWCP has accepted a claim it has the burden of justifying termination or modification of compensation benefits.⁵ OWCP may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁶

⁴ In a June 9, 2011 work restrictions form, Dr. Dinenberg stated that appellant was unable to work due to his nonwork-related degenerative disc disease and stenosis.

⁵ *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

⁶ *Id.*

Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁷

ANALYSIS

OWCP accepted that on September 13, 1976 appellant sustained a lumbosacral strain due to lifting a bag filled with linen. He stopped work on September 13, 1976 and received compensation for total disability. In a June 13, 2011 report, Dr. Dinenberg, a Board-certified orthopedic surgeon who served as an OWCP referral physician, determined that appellant no longer had residuals of his September 13, 1976 work injury. Based on this opinion, OWCP terminated appellant's wage-loss compensation and medical benefits effective September 30, 2011.

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Dinenberg, whose June 13, 2011 report establishes that appellant had no residuals of his September 13, 1976 work injury after September 30, 2011.

In his June 13, 2011 report, Dr. Dinenberg provided an extensive discussion of appellant's medical history, including past findings on examination and diagnostic testing. He indicated that the physical examination performed on June 13, 2011 revealed lumbosacral tenderness, intact sensation to light touch, 5/5 strength of the lower extremities and negative straight leg raising. Dr. Dinenberg diagnosed lumbar degenerative disc disease, lumbar stenosis and resolved lumbosacral strain. He determined that the examination findings showed that the September 13, 1976 lumbosacral strain had resolved and posited that appellant's continuing back symptoms and disability were related to lumbar degenerative disc disease and stenosis, conditions which were unrelated to the September 13, 1976 injury.

The Board has carefully reviewed the opinion of Dr. Dinenberg 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. Dinenberg provided a thorough factual and medical history and accurately summarized the relevant medical evidence.⁸ He provided medical rationale for his opinion by explaining that appellant did not have any objective signs of the work-related September 13, 1976 lumbosacral strain. Dr. Dinenberg noted that this type of soft-tissue injury would have resolved itself and that the examination findings did not show the existence of a lumbosacral strain. He further explained that appellant's continuing medical problems were due to degenerative disc disease and stenosis, conditions which were shown by diagnostic testing and other medical evidence to be unrelated to his accepted September 13, 1976 work injury.

⁷ See *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁸ See *Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

Appellant did not submit any medical evidence showing that he had residuals of his September 13, 1976 work injury around the time his compensation was terminated or thereafter.⁹ OWCP met its burden of proof to terminate his wage-loss compensation and medical benefits effective September 30, 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 met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective September 30, 2011 on the grounds that he had no residuals of his September 13, 1976 work injury after that date.

ORDER

IT IS HEREBY ORDERED THAT the January 27, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 26, 2012
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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

⁹ On appeal, appellant asserted that the medical evidence showed that the termination of his compensation was not justified, but he did not indicate which medical evidence in the record supported this assertion. The record contains very few medical records from attending physicians as appellant only sporadically sought medical care for his back condition.