

FACTUAL HISTORY

On June 24, 2010 appellant, then a 58-year-old food inspector, injured his back while in the performance of duty. He stopped work and did not return.² A July 13, 2010 computerized tomography (CT) scan obtained by Dr. Melissa N. Bischoff, a Board-certified diagnostic radiologist, exhibited multilevel degenerative changes, particularly at L3-L4, L4-L5, and L5-S1. In a subsequent September 27, 2010 magnetic resonance imaging (MRI) scan report, Dr. Jason T. Helvey, a Board-certified diagnostic radiologist, confirmed L4-L5 degeneration as well as bilateral lateral recess stenosis. OWCP accepted appellant's traumatic injury claim for lumbar strain³ and paid disability compensation accordingly.⁴

Dr. Roger W. Nutt, a Board-certified internist, discharged appellant to a modified assignment in a November 19, 2010 duty status report. He imposed the following restrictions: lifting items weighing up to 2.5 pounds continuously and 5 pounds intermittently for 2 hours each; intermittent standing for 15 minutes; intermittent walking for 2 hours; occasional reaching above the shoulder for 4 hours; and continuous sitting, simple grasping and fine manipulation for 8 hours each. Dr. Nutt prohibited climbing, kneeling, bending, stooping, twisting, pulling and pushing activities.⁵ The employing establishment did not offer a job accommodating these restrictions. In a January 10, 2011 progress note, Dr. Nutt opined that the accepted lumbar strain did not resolve. He noted that appellant "has no other condition" due to the June 24, 2010 employment incident."

A May 13, 2008 MRI scan obtained by Dr. Mary K. Drake, a Board-certified diagnostic radiologist, showed degenerative facet arthropathy, central canal stenosis at L2-L3, L3-L4 and L4-L5, and foraminal stenosis and degenerative disease most pronounced at L5-S1. In addition, the June 23, 2011 statement of accepted facts detailed that appellant underwent lumbar surgery in 1974 and had chronic back pain, osteoarthritis, and lumbar and lumbosacral disc degeneration, *inter alia*, unrelated to the June 24, 2010 employment incident.⁶

OWCP informed appellant in a July 12, 2011 letter that the medical evidence indicated that he was capable of employment within certain physical limitations. It thereafter referred him for a second opinion examination to Dr. Michael J. Morrison, a Board-certified orthopedic surgeon.

² Appellant filed two prior claims concerning injuries that arose on October 20, 2001 and March 3, 2009, respectively. OWCP File Nos. xxxxxx225 & xxxxxx135. These matters are not presently before the Board.

³ OWCP noted that the claim was originally received as a simple, uncontroverted case resulting in minimal or no lost time from work and payment was approved for limited medical expenses without formal adjudication. Appellant was also referred to a nurse intervention program on August 25, 2010 to assist in his recovery from the work-related injury. Nursing services expired effective September 16, 2011.

⁴ The case record indicates that appellant also received disability benefits from the Veterans Administration.

⁵ Dr. Nutt restated these restrictions in a January 3, 2011 duty status report.

⁶ The statement of accepted facts also incorporated information presented in the foregoing paragraphs.

In an August 10, 2011 report, Dr. Morrison reviewed the June 23, 2011 statement of accepted facts and the medical file, noting appellant's account that he received lumbar epidural injections at Veterans Administration hospitals in the 1990s. On examination, he observed paravertebral muscle tenderness, well-healed midline lumbar incision, and knee and ankle jerk reflexes of 1+ and 4+, respectively. Dr. Morrison remarked that appellant's subjective complaints of lower back and bilateral leg symptoms conflicted with the objective physical findings, which did not indicate either spinal stenosis or nerve root compromise. He diagnosed lumbar strain, status post left L5-S1 discectomy and degenerative lumbar disc disease with mild disc bulging. Dr. Morrison concluded:

"I do not believe that the incident of June 24, 2010 is what is preventing him from being able to return back to his job duties.... I believe it has been a cumulative, ongoing lower back condition that dates back to having back surgery in the 1970s, symptoms in his back in the 1990s and again lower back symptomatology in May 2008 ... requiring imaging studies being done then for lower back symptomatology. It is this long, ongoing, preexisting lower back condition that has continued to get worse with time with underlying degenerative lumbar disc disease that presently is preventing him from coming back to his duties. It [i]s not the single incident of June 24, 2010, in my opinion."

He further elaborated that the accepted lumbar strain, which was a temporary irritation of the lower back, already resolved.

On September 14, 2011 OWCP issued a notice of proposed termination of wage-loss compensation and medical benefits. It gave appellant 30 days to submit rebuttal evidence.

In an October 4, 2011 response, Dr. Nutt maintained that appellant's debilitating back pain resulted from the June 24, 2010 employment incident and prevented him from returning to work. He opined that appellant would still be employed "if not for the injury."

By decision dated October 19, 2011, OWCP terminated appellant's medical and wage-loss benefits effective October 22, 2011, finding that the weight of the medical evidence established that his accepted employment condition resolved.

LEGAL PRECEDENT

Once OWCP has accepted a claim, it has the burden of justifying termination or modification of compensation benefits,⁷ which includes furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁸ Having determined that an employee has a disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability ceased or was no longer related to the employment.⁹ The right to medical benefits for an accepted condition, on the other hand, is

⁷ *I.J.*, 59 ECAB 408 (2008); *Fermin G. Olascoaga*, 13 ECAB 102, 104 (1961).

⁸ *D.C.*, Docket No. 09-1070 (issued November 12, 2009); *Larry Warner*, 43 ECAB 1027 (1992).

⁹ *I.J.*, *supra* note 7.

not limited to the period of entitlement to disability compensation. To terminate authorization for medical treatment, OWCP must establish that an employee no longer has residuals of an employment-related condition, which would require further medical treatment.¹⁰

ANALYSIS

OWCP accepted appellant's traumatic injury claim for lumbar strain. Dr. Nutt, the attending physician, determined in November 19, 2010 and January 3, 2011 duty status reports that appellant was capable of modified assignment, but clarified in a January 10, 2011 progress note that the lumbar strain had not yet resolved. OWCP thereafter referred him for a second opinion examination to Dr. Morrison, who concluded in an August 10, 2011 report that his continuing disability was no longer related to his federal employment. Subsequently, it terminated appellant's wage-loss compensation and medical benefits effective October 22, 2011.

The Board finds that Dr. Morrison's August 10, 2011 report constituted the weight of the medical evidence. The weight of the 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.¹¹ Here, Dr. Morrison conducted an extensive physical examination, during which he observed the absence of spinal stenosis and nerve root compromise. A review of the June 23, 2011 statement of accepted facts and medical file also revealed a preexisting history of back problems, including lumbar surgery in 1974, epidural steroid injections in the 1990s, and evidence of degenerative facet arthropathy and degenerative disease most pronounced at L5-S1 as of May 13, 2008. Based on this thorough assessment, Dr. Morrison concluded that appellant's employment-related disability and residuals ceased, explaining that the accepted lumbar strain was a temporary irritation that resolved. Instead, he opined that any disability and lingering symptomatology were more likely attributable to his underlying degenerative lumbar disc disease rather than a single incident. On the other hand, Dr. Nutt's October 4, 2011 note reiterating that appellant's back pain was a residual of the accepted lumbar strain failed to provide sufficient medical rationale explaining how residuals of the accepted lumbar strain continued and were disabling.¹² Consequently, the Board finds that OWCP properly relied on Dr. Morrison's opinion in terminating appellant's wage-loss compensation and medical benefits.

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 wage-loss compensation and medical benefits effective October 22, 2011.

¹⁰ *L.G.*, Docket No. 09-1692 (issued August 11, 2010); *Furman G. Peake*, 41 ECAB 361, 364 (1990).

¹¹ *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *James Mack*, 43 ECAB 321, 329 (1991).

¹² *Dean E. Pierce*, 40 ECAB 1249 (1989).

ORDER

IT IS HEREBY ORDERED THAT the October 19, 2011 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: June 12, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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