

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

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**J.C., Appellant**

**and**

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

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**Docket No. 12-199  
Issued: June 8, 2012**

*Appearances:*

*Jeffrey P. Zeelander, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Judge  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On November 3, 2011 appellant, through his attorney, filed a timely appeal from an October 27, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 compensation benefits on March 22, 2011 on the grounds that he had no disability or residuals causally related to an April 20, 2010 employment injury.

On appeal appellant's attorney asserts that OWCP failed to create a proper record, including an incomplete statement of accepted facts and provided leading questions to an OWCP referral physician. He requested that the October 27, 2011 decision be set aside and the instant

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

claim doubled with a 1993 claim, accepted for aggravation of degenerative disc disease and herniated disc at L4-5.

### **FACTUAL HISTORY**

On July 9, 2010 OWCP accepted that appellant, then a 46-year-old letter carrier, sustained an employment-related lumbar sprain on April 20, 2010 while retrieving mail from his postal vehicle. Appellant did not stop work but missed intermittent periods for medical visits and physical therapy, for which he was paid wage-loss compensation. A 1993 claim was accepted for aggravation of lumbar degenerative disc disease and disc bulge and a 2000 claim for low back pain.<sup>2</sup>

In a May 24, 2010 report, Dr. Rajesh Mehta, Board-certified in internal medicine and physical medicine and rehabilitation, noted history of injury and a chief complaint of mid and low back pain. He provided findings on physical examination and diagnosed lumbar and thoracic radiculopathy. Dr. Mehta performed right lumbar epidural steroid injections on May 24, June 28 and August 16, 2010.

A September 28, 2010 magnetic resonance imaging (MRI) scan of the lumbar spine demonstrated mild degenerative changes, particularly at the L4-5 level, a probable hemangioma at L3, and a mild broad-based foraminal protrusion at L3-4 on the right with minor contact of exiting right L3 nerve root. On October 4, 2010 Dr. Mehta reviewed the MRI scan study findings and appellant's complaint of intermittent low back and diffuse right leg pain. Physical examination demonstrated poorly localized tenderness in the lumbosacral spine with mild to moderate restriction lumbosacral spine range of motion. Dr. Mehta diagnosed chronic right lumbosacral radiculopathy and recommended an additional epidural injection. On November 1, 2010 he advised that appellant's general examination was unchanged. Dr. Mehta performed a lower extremity electrodiagnostic study that demonstrated right L5 and, to a lesser extent, L4 radiculopathy with more chronic than acute changes and no evidence of other focal nerve damage.

On December 1, 2010 OWCP referred appellant to Dr. Scott J. Szabo, a Board-certified orthopedic surgeon, for a second opinion evaluation. Dr. Szabo was provided with a statement of accepted facts that described the history of injury and indicated that the claim was accepted for a lumbar sprain. The statement of accepted facts also noted that appellant had additional claims, including a September 1, 1993 injury accepted for aggravation of lumbar degenerative disc disease and disc bulge and a January 8, 2000 claim accepted for low back pain. OWCP asked that Dr. Szabo answer specific questions:

“Are the claimant's current symptoms due to the work injury or his preexisting degenerative condition?”

“Your narrative report, including your response to the questions below, should clarify the issues discussed above. The attached statement of accepted facts

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<sup>2</sup> The 1993 claim was adjudicated by OWCP under file number xxxxxx353, the 2000 claim under file number xxxxxx519 and the instant claim under file number xxxxxx268.

(SOAF) provides a factual summary of the relevant facts accepted by [OWCP]. Previous medical reports may not have been based on the attached SOAF. You must use the SOAF as the only factual framework for your opinion.

“Provide all diagnoses found, and their codes according to ICD-9-CM. Explain which, if any, are medically connected to the incident.

“Are there any subjective complaints that do not correspond with objective findings?

“Has the patient reached maximum medical improvement (MMI) from the work injury? If so, approximately when? If not, when do you expect that MMI should occur?

“Is the diagnosed condition medically connected to the factors of employment as described in the SOAF either by direct cause, aggravation, precipitation or acceleration?

“If aggravation is indicated, it should be explained if this is temporary or permanent. If temporary, when did such aggravation cease or when may it be expected to cease? If permanent, what material change has occurred to alter the course of the underlying disease? Give detailed reasoning for your conclusions.

“Describe any nonindustrial or preexisting disability.

“Does the claimant continue to suffer residuals of the injury? Give your medical reasons for the opinion expressed.

“Prognosis and recommendations for medical treatment if indicated.

“Description of any injury-related factors of disability, including objective findings and subjective complaints.

“Describe the claimant’s physical limitations resulting from the work[-]related disability, as well as any restrictions attributable to preexisting conditions. Complete the enclosed Form OWCP-5 based upon pertinent findings.

“Please provide comments on the patient’s medical treatment thus far, particularly whether treatment has been appropriately oriented toward returning the patient to productivity and employment.

“Are the lumbar epidural injections needed due to the April 20, 2010 work incident or the claimant’s preexisting degenerative disc disease?

“Please provide your well[-]reasoned opinion on the extent of the injury sustained on April 20, 2010. Did the claimant sustain more than the accepted lumbar strain?”

In a December 23, 2010 report, Dr. Szabo reviewed the medical record, including imaging studies, and the statement of accepted facts. He advised that appellant had a significant preexisting history with two lumbar spine decompression surgical procedures. Dr. Szabo described the April 20, 2010 employment injury and appellant's complaints of sharp, lumbar pain, made worse with exertion, prolonged positions and at the end of the workday. He noted that appellant arose and mounted the examination table without difficulty or assistance, and exhibited a normal gait, ability to walk on toes and heels and performed a squat. Dr. Szabo stated that on physical examination the lumbar spine was not tender to palpation and there was no paravertebral muscle spasm. Straight leg raise tests were negative seated and supine and the Faber's test was mildly positive on the right. Dr. Szabo noted that appellant reported subjectively diminished sensation to light touch over the entirety of his right leg. He diagnosed an employment-related lumbar strain, resolved. Dr. Szabo advised that there was no evidence that the April 20, 2010 injury exacerbated or accelerated appellant's preexisting condition, opining that his present symptoms were unrelated to the April 20, 2010 employment injury. He noted that appellant had outstanding subjective complaints but did not have any objective impairment or dysfunction on examination. There was good spinal motion, no tenderness and no spasm, and no evidence of neurological abnormalities during motor testing of strength and reflexes. Dr. Szabo indicated that appellant's present treatment including narcotics, muscle relaxants and anti-inflammatories that were related to the preexistent lumbar spine disease and not the April 20, 2010 lumbar strain. He concluded that appellant had no residuals and needed no further medical treatment as a result of the April 20, 2010 injury. Any ongoing treatment would be for appellant's preexistent lumbar spine pathology. In an attached work capacity evaluation, Dr. Szabo advised that appellant could perform his usual job for eight hours a day without restrictions.

In a letter dated February 10, 2011, OWCP proposed to terminate appellant's medical benefits and monetary compensation for the instant claim on the grounds that the medical evidence, as characterized by Dr. Szabo's December 23, 2010 report, established that appellant's condition due to the April 20, 2010 employment injury had resolved.

Appellant disagreed with the proposed termination. He stated that, although he had a previous back injury and surgery in 1994 to 1995, his back was fine until the April 20, 2010 work injury, and since then he had to take medications and wear a back brace at work.

By decision dated March 22, 2011, OWCP finalized the termination of appellant's monetary compensation and medical benefits.

Appellant timely requested a hearing that was held on August 11, 2011. At the hearing, counsel asserted that the statement of accepted facts provided to Dr. Szabo was incomplete, that the physician was asked leading questions and that the instant case should be consolidated with the prior claim approved for aggravation of degenerative disc disease. Appellant testified that he returned to full duty but continued to work through pain.

In an October 27, 2011 decision, an OWCP hearing representative affirmed the March 22, 2011 decision. She noted that appellant sustained an employment-related back injury in 1993 that was accepted for herniated disc at L4-5 and aggravation of lumbar degenerative joint disease and that appellant had two surgical procedures under the 1993 claim. The hearing

representative found that the statement of accepted facts provided to Dr. Szabo was sufficient and did not ask leading questions. She noted that appellant failed to provide a rationalized medical opinion to support that he continued to have residuals of the April 2010 employment injury and found that the weight of the medical opinion rested with the opinion of Dr. Szabo.

### **LEGAL PRECEDENT**

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.<sup>3</sup> OWCP's burden of proof to terminate compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>4</sup>

### **ANALYSIS**

The Board finds that OWCP met its burden of proof to terminate appellant's compensation benefits for the April 20, 2010 employment injury.

The Board finds that the weight of the medical evidence rests with the December 23, 2010 second opinion evaluation of Dr. Szabo who provided a comprehensive evaluation based on his review of the statement of accepted facts and medical record, the history of injury, appellant's complaints of continued pain, and physical examination findings. Dr. Szabo provided a thorough physical examination and found no evidence that the April 20, 2010 injury exacerbated or accelerated appellant's condition. He stated that appellant's present symptoms were preexistent and unrelated to the April 20, 2010 employment injury. Dr. Szabo noted that appellant had outstanding subjective complaints but did not have an objective impairment or dysfunction on examination, with good spinal motion, no tenderness, and no spasm, and no evidence of abnormalities of his neurological assessment in testing motor strength and reflexes. He concluded that appellant had no residuals and needed no further treatment as a result of the April 20, 2010 injury and could perform his usual job duties without restriction. 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.<sup>5</sup>

In reports dated May 20 to November 1, 2010, Dr. Mehta described appellant's condition but did not relate the physical findings to the April 20, 2010 work injury.

As to appellant's arguments on appeal, the Board finds that the statement of accepted facts was not incomplete and properly identified appellant's previously accepted conditions. In the December 23, 2010 report, Dr. Szabo acknowledged appellant's preexisting history. The Board finds that the questions posed to Dr. Szabo were not leading in nature. The Board has

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<sup>3</sup> *Jaja K. Asaramo*, 55 ECAB 200 (2004).

<sup>4</sup> *Id.*

<sup>5</sup> *C.B.*, Docket No. 08-1583 (issued December 9, 2008).

defined a leading question as one which suggests or implies an answer to the question posed.<sup>6</sup> The questions asked in this case were open-ended and did not suggest an answer. They were of the type of medical query to be answered by a physician in describing a claimant's condition.<sup>7</sup>

The instant claim involves an April 20, 2010 work injury and, as there is no reasoned contemporaneous medical evidence supporting appellant's claim for continuing disability and residuals due to this injury, OWCP properly terminated his compensation benefits on March 22, 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 monetary compensation and medical benefits on March 22, 2011.

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<sup>6</sup> *Carl D. Johnson*, 46 ECAB 804 (1995).

<sup>7</sup> *See J.D.*, Docket No. 11-131 (issued December 21, 2011).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 27, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 8, 2012  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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