United States Department of Labor
Employees' Compensation Appeals Board

A.P., Appellant	)	
	)	**Docket No. 11-1545**
and	)	**Issued: March 2, 2012**
	)	
DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION, Renton, WA, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 17, 2011 appellant, through his attorney, filed a timely appeal from an April 25, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) which affirmed the termination of his medical and compensation benefits. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether OWCP met its burden of proof to terminate appellant's compensation benefits for his accepted injury effective October 6, 2010.

[1] 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On March 24, 2009 appellant, then a 40-year-old aviation safety inspector, was injured when his government automobile was struck by another vehicle while in the performance of duty. OWCP accepted his claim for a neck sprain. Appellant stopped work on March 25, 2009 and returned on March 27, 2009.

Appellant was treated in the emergency room on March 24, 2009 by Dr. Todd Christiansen, a Board-certified emergency room physician, for a neck injury sustained in a work-related motor vehicle accident. Dr. Christiansen diagnosed cervical strain and contusions. Cervical spine x-rays showed degenerative changes C3-4 and C4-5 but no fracture or subluxation. Appellant came under the treatment of Dr. Jeffrey Brown, an osteopath, from March 27, 2009 to January 27, 2010, for back and neck pain. Dr. Brown diagnosed cervicalgia, backache, headache and paresthesia. In reports dated June 17, 2009 to January 27, 2010, he diagnosed musculoneuralgia and numbness in both feet and recommended trigger point injections. Dr. Brown noted that appellant was able to resume regular duty on March 27, 2009. Appellant was treated by Dr. Bess Chang, an osteopath and Board-certified neurologist to whom appellant was referred by Dr. Brown, who performed an electromyogram (EMG) and nerve conduction studies on February 18, 2010 which revealed mild acute L5-S1 radiculopathy bilaterally.

On April 14, 2010 Dr. John A. Anson, a Board-certified neurosurgeon, to whom appellant was referred by Dr. Chang, noted the history of the March 24, 2009 motor vehicle crash. At that time, appellant did not have any apparent significant injuries but, thereafter noticed numbness in the bottoms of his feet. He listed an impression of numbness and dysesthesias along the soles of the feet with minimal back pain and no other radicular symptoms. Dr. Anson opined that this was consistent with an early localized peripheral neuropathy and not likely related to appellant's mild L5-S1 degenerative disease.

Appellant contacted OWCP on June 9, 2010 when his request for authorization of lumbar spine treatment was not approved. OWCP advised appellant that his only accepted condition was a neck sprain and that a second opinion would be arranged.

OWCP referred appellant to Dr. Aubrey A. Swartz, a Board-certified orthopedic surgeon, for a second opinion. In a June 22, 2010 report, Dr. Swartz noted that examination of the back revealed good station and gait, limited range of motion of the back, normal lumbar lordotic curve, minimal tenderness of the lumbosacral region with no tenderness of the cervical spine, full range of motion of the cervical spine, reflexes were absent in the lower extremities, hypesthesias over the medial and lateral borders of both feet, negative straight leg raises bilaterally with normal motor function. He noted an unremarkable examination of appellant's lumbar and cervical spine with full range of motion and only minimal tenderness to light touch and no neurological findings. An MRI scan of the lumbar spine was unremarkable with mild disc bulging and no nerve root compromise or foraminal stenosis. With regard to the cervical spine, there was no evidence of record to reflect significant injury or residuals to either the neck or low back. Dr. Swartz found that appellant had no residuals of the March 24, 2009 accident. He noted hypesthesias over the medial and lateral borders and plantar surfaces of both feet;

however, there was no indication that these findings were related to the motor vehicle accident or to any straining injuries to the cervical or lumbar spine. Dr. Swartz noted that findings from a June 4, 2009 EMG performed by Dr. Brown did not specifically diagnose neuropathy in the feet or radiculopathy and Dr. Chang diagnosed mild L5-S1 radiculopathy bilaterally but did not address neuropathy in the feet. Dr. Swartz recommended additional electrodiagnostic studies.

On July 20, 2010 appellant underwent an EMG which revealed mild chronic bilateral C5-C6 radiculopathy with mild right ulnar nerve entrapment at the wrist. In a supplemental report dated July 28, 2010, Dr. Swartz advised that appellant sustained a cervical strain as a result of the motor vehicle accident on March 4, 2009 and had preexisting degenerative disc disease in the cervical spine. He noted that appellant underwent an EMG which found evidence of chronic mild bilateral L5-S1 radiculopathy which was not currently active with no evidence of it clinically. Dr. Swartz noted that appellant sustained a self-limiting soft tissue strain of the cervical spine related to his work injury which resolved and his current symptoms were attributable to his preexisting degenerative disease. Appellant had reached maximum medical improvement on June 22, 2010, was currently working his regular job, full time as an aircraft mechanic and required no further medical treatment referable to his work injury.

Appellant submitted reports from Dr. Brown dated July 2 to August 6, 2010. Dr. Brown continued to treat appellant for back discomfort and tingling in his feet. He diagnosed cervicalgia, backache and musculoneuralgia and recommended osteopathic manipulation.

On August 20, 2010 OWCP issued a notice of proposed termination of compensation benefits based on Dr. Swartz's reports.

In a statement dated September 14, 2010, appellant, through his attorney, objected to the proposed termination and asserted that Dr. Swartz was biased and was mainly hired by employers. He asserted that appellant continued to have residuals of his work injury. Appellant submitted an EMG dated June 4, 2009 which revealed lumbar plexopathy without motor deficit. In a September 7, 2010 report, Dr. Brown noted treating appellant on March 31, 2009 when he reported symptoms of numbness and tingling of the left lower extremity. He advised that osteopathic manipulation was successful in reducing pain but the neurological symptoms persisted. Dr. Brown noted a June 4, 2009 EMG revealed nerve pathology in lumbar segment L5 and S1. He indicated that appellant did not experience paresthesia prior to his work injury, rather it developed after his work accident.

In an October 6, 2010 decision, OWCP terminated appellant's compensation benefits effective that date, finding that Dr. Swartz's reports represented the weight of the medical evidence and established that appellant had no continuing residuals of his accepted injuries.

On October 13, 2010 appellant requested a telephonic hearing which was held on February 7, 2011. He submitted June 4, 2009 and July 20, 2010 EMG's and reports from Dr. Brown previously of record. Appellant submitted a magnetic resonance imaging (MRI) scan of the lumbar spine dated February 17, 2010 revealed a L5-S1 posterior disc bulge and L2-L3 posterolateral disc bulge. Also submitted were reports from Dr. Michael A. Prater, a Board-certified anesthesiologist, dated October 18, 2010 to January 3, 2011, who noted a history of appellant's work injury of March 24, 2009 and diagnosed low back pain, bulging lumbar disc

and bilateral lower extremity symptomology. Dr. Prater recommended bilateral L5-S1 selective nerve root blocks which were performed on December 2, 2010. In a January 3, 2011 report, he noted that appellant experienced a few days of decreased pain in his back but no change in the numbness in the bottom of his feet. Dr. Prater noted findings of tenderness of the lumbar spine and decreased sensation to light touch along the left lateral calf and shin and recommended oral analgesics.

In a decision dated April 25, 2011, the hearing representative affirmed the October 6, 2010 OWCP decision.

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] The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, OWCP must establish that a claimant no longer has residuals of an employment-related condition, which requires further medical treatment.[4]

ANALYSIS

OWCP accepted appellant's claim for work-related neck sprain. Appellant was released to work regular duty without restrictions on March 27, 2009 but he continued to receive medical treatment claiming complaints of lower back pain. OWCP, indicating that the neck sprain was the only accepted condition, referred appellant for a second opinion evaluation by Dr. Swartz.

In a June 22, 2010 report, Dr. Swartz provided an extensive review of appellant's medical history, reported examination findings and diagnosed neck sprain. He found that there were no clinical findings of any residuals or disability causally related to the accepted employment injury. Dr. Swartz noted an unremarkable examination of appellant's lumbar and cervical spine with full range of motion and only minimal tenderness to light touch and no neurological findings. He opined that appellant had no residuals of the March 24, 2009 accident. Dr. Swartz noted hypesthesias over the medial and lateral borders and plantar surfaces of both feet; however, there was no indication that these findings were related to the motor vehicle accident or to any straining injuries to the cervical or lumbar spine. He recommended an EMG which was performed on July 20, 2010 which revealed evidence of mild chronic bilateral C5-C6 radiculopathy with mild right ulnar nerve entrapment at the wrist. In a supplemental report dated July 28, 2010, Dr. Swartz advised that appellant sustained a cervical strain as a result of the motor vehicle accident on March 4, 2009 and had preexisting degenerative disc disease in the

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

[3] *Mary A. Lowe*, 52 ECAB 223 (2001).

[4] *Id.; Leonard M. Burger*, 51 ECAB 369 (2000).

cervical spine. He noted that appellant had an EMG that showed chronic mild bilateral L5-S1 radiculopathy which was not active. Dr. Swartz found no evidence of radiculopathy clinically as appellant had no neurological symptoms in the upper extremities and no neurological findings upon examination. He stated that appellant sustained a self-limiting soft tissue strain of the cervical spine related to his work injury which resolved and his current symptoms were attributed to his preexisting degenerative disease. Dr. Swartz advised that appellant reached maximum medical improvement on June 22, 2010 and required no further treatment. Appellant was currently working his regular job, full time as an aircraft mechanic. Dr. Swartz found no basis on which to attribute any continuing symptoms to the accepted neck sprain.

The Board finds that Dr. Swartz's report's represents the weight of the medical evidence and that OWCP properly relied on his reports in terminating appellant's compensation and medical benefits on October 6, 2010. Dr. Swartz's opinion is based on proper factual and medical history as he reviewed a statement of accepted facts and appellant's prior medical treatment and test results. He also related his comprehensive examination findings in support of his opinion that the accepted work-related condition had resolved. Dr. Swartz indicated that appellant did not have residuals from the condition of neck sprain and that his current condition was due to his preexisting degenerative conditions. There is no contemporaneous medical evidence of equal weight supporting appellant's claim for continuing disability and medical residuals. Although appellant asserted, before OWCP, that Dr. Swartz harbored bias against employees, there is no evidence of record to support that Dr. Swartz had any bias toward appellant. Instead the record indicates that he conducted a full examination, reviewed the record, and sought additional testing in arriving at his opinion. Thus, OWCP met its burden of proof to terminate appellant's compensation benefits.

Appellant submitted reports from Dr. Brown dated July 2 to August 6, 2010 who continued to treat appellant for back discomfort and tingling in his feet. He diagnosed cervicalgia, backache and musculoneuralgia. Similarly, on September 7, 2010 Dr. Brown noted treating appellant after his accident on March 31, 2009 when he reported symptoms of numbness and tingling of the left lower extremity. He opined that appellant's symptoms of paresthesia occurred after his work accident. However, none of Dr. Brown's reports specifically provide any medical reasoning to explain how any continuing condition was causally related to the March 24, 2009 work injury, accepted for a neck sprain, and therefore are of limited probative value.[5] Additionally, he related appellant's current paresthesia to the employment injury but, his only rationale for doing so was that appellant had no paresthesia prior to the employment injury. The Board has held that an opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury is insufficient, without supporting rationale, to support a causal relationship.[6]

Reports from Dr. Prater dated October 18, 2010 to January 3, 2011 diagnosed low back pain, bulging lumbar disc and bilateral lower extremity symptomology. However, Dr. Prater did

[5] *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

[6] *Kimper Lee*, 45 ECAB 565 (1994). Furthermore, for conditions not accepted by OWCP as being employment related, the claimant bears the burden of proof to establish that the condition is causally related to the employment injury. *See Asaramo, supra* note 5.

not address whether any continuing residuals or disability was causally related to the accepted injury.[7] Likewise, various reports of diagnostic testing do not provide an opinion on whether appellant had continuing residuals causally related to the accepted injury. Appellant submitted no other current medical evidence supporting that his work-related conditions had not resolved.

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 has met its burden of proof to terminate benefits effective October 6, 2010.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 25, 2011 is affirmed.

Issued: March 2, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

[7] *See S.E.*, Docket No. 08-2214 (issued May 6, 2009) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).