

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

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**F.S., Appellant**

**and**

**U.S. POSTAL SERVICE, DUNMORE POST  
OFFICE, Scranton, PA, Employer**

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**Docket No. 11-1597  
Issued: March 27, 2012**

*Appearances:*

*Alan J. Shapiro, 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 June 28, 2011 appellant, through his attorney, filed a timely appeal from a May 16, 2011 decision of the Office of Workers' Compensation Programs (OWCP) concerning the termination of his compensation benefits. 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 properly terminated appellant's wage-loss and medical benefits effective February 3, 2011 on the grounds that he no longer had any residuals or disability causally related to his accepted injuries.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On March 23, 2001 appellant, then a 50-year-old letter carrier, filed a traumatic injury claim alleging that on that day he sustained neck and back injuries when he fell between the dock and long life vehicle. OWCP accepted the claim for cervical and lumbar strains. Appellant returned to limited-duty work following his injury. On October 5, 2007 he accepted a limited-duty job assignment as a city carrier. OWCP accepted appellant's claims for recurrences of disability beginning April 20, 2009 and intermittent disability beginning June 19, 2010 and continuing until January 28, 2011.

On March 24, 2005 OWCP referred appellant to Dr. Robert F. Draper, Jr., a Board-certified orthopedic surgeon, for a determination of appellant's work restrictions and current medical condition. On April 25, 2005 Dr. Draper diagnosed cervical and lumbar strains, preexisting cervical degenerative disease and preexisting severe left cervical foraminal stenosis. He concluded that appellant had permanent work restrictions due to his nonemployment-related degenerative condition.

On January 29, 2010 Dr. Joseph Greco, a treating physician specializing in internal medicine, stated that appellant continued to have residuals of the accepted employment injury. He noted that appellant's complaints were unchanged since the date of the employment injury with ongoing issues as a result of the injury.

On July 8, 2010 OWCP referred appellant for an updated second opinion evaluation with Dr. Draper for a determination of appellant's current physical condition. On August 23, 2010 Dr. Draper reviewed the medical evidence, an updated statement of accepted facts and set forth findings on physical examination. He concluded that appellant's accepted cervical and lumbar strains had resolved. Dr. Draper diagnosed cervical strain, preexisting cervical disease, severe at C2-3, C-3, C-4 and C6-7 foraminal stenosis associated with preexisting degenerative cervical disc disease and osteoarthritis and lumbosacral strain. He related that appellant sustained a neck injury in May 2009 due to a nonemployment-related automobile accident with neck surgery performed on June 7, 2010. Dr. Draper noted that the automobile accident and the surgery affected appellant's neck significantly impacting his ability to perform his job. He concluded that appellant's accepted neck and lumbar sprains had resolved as they were soft tissue injuries to the back and neck. The cervical spine protruding or bulging discs seen on the magnetic resonance imaging (MRI) scan studies were due to appellant's cervical spine arthritis and preexisting cervical degenerative disc disease and unrelated to the March 23, 2001 employment injury. Dr. Draper stated that it was conceivable that appellant's automobile accident caused a significant aggravation of a preexisting cervical degenerative disc disease and the surgery following the automobile accident. The record he was sent did not contain the MRI scan studies or x-rays following the automobile accident for review. Therefore, Dr. Draper was unable to offer an opinion as to the effects of the automobile accident, how it aggravated appellant's preexisting cervical degenerative disc disease and the resulting need for anterior cervical discectomy and fusion.

On August 26, 2010 OWCP issued a notice proposing to terminate appellant's compensation based on Dr. Draper's August 23, 2010 report.

On September 28, 2010 appellant submitted a June 2, 2010 report from Dr. Greco who opined that appellant's March 23, 2001 fall at work resulted in herniated discs and nerve compression. Dr. Greco related that an injury at one level of the spine can result in symptoms of lower spinal cord nerves. In concluding, he opined that appellant's complaints, mild weakness of the back, upper and lower extremities were all due to the herniated discs caused by the March 23, 2001 employment injury.

On December 1, 2010 OWCP requested that appellant submit a copy of the June 7, 2010 neck surgical report which was referenced by Dr. Draper in his August 23, 2010 report. It also requested that he provide a statement of his injuries and explanation of his May 2009 nonemployment-related automobile accident that Dr. Draper mentioned. Appellant was given 30 days to provide the requested information.

On December 28, 2010 OWCP received a copy of the June 7, 2010 operative report and appellant's statement regarding the May 27, 2009 nonemployment-related automobile accident.

By decision dated February 3, 2011, OWCP finalized the termination of appellant's compensation benefits effective that day. It found the weight of the evidence rested with Dr. Draper's report.

Appellant disagreed with the February 3, 2011 decision and requested a review of the written record by an OWCP hearing representative.

By decision dated May 16, 2011, OWCP's hearing representative affirmed the termination of appellant's compensation benefits.

### **LEGAL PRECEDENT**

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.<sup>2</sup> After it has determined that an employee has disability causally related to 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.<sup>3</sup> OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>4</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.<sup>5</sup> To terminate authorization for medical treatment, OWCP must

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<sup>2</sup> *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

<sup>3</sup> *I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

<sup>4</sup> *See I.R.*, Docket No. 09-1229 (issued February 24, 2010); *J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

<sup>5</sup> *A.P.*, Docket No. 08-1822 (issued August 5, 2009); *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.<sup>6</sup>

### ANALYSIS

OWCP accepted appellant's claim for cervical and lumbar strains and paid wage-loss compensation for disability beginning April 20, 2009 and intermittent disability beginning June 19, 2010 and continuing until January 28, 2011. By decision dated February 3, 2011, it terminated his compensation benefits effective that day on the basis that the weight of the medical opinion evidence rested with Dr. Draper, an OWCP referral physician. This decision was affirmed by an OWCP hearing representative in a May 16, 2011 decision. The issue is whether OWCP has met its burden of proof in terminating appellant's disability and medical compensation after February 3, 2011. The Board finds that OWCP did not meet its burden of proof to terminate appellant's compensation benefits.

The Board finds initially that the reports from Dr. Greco are insufficient to support any continuing residuals or disability due to the accepted lumbar and cervical strain. Dr. Greco provided no medical rationale supporting his opinion. He merely stated a conclusion without explaining how the conclusion was supported by his examination or the medical evidence in the record. As Dr. Greco failed to provide adequate rationale in support of his conclusion that appellant continued to suffer from residuals and disability from his accepted employment injuries, his report is of limited probative value.<sup>7</sup> Thus, OWCP properly referred the case to Dr. Draper, the second opinion physician, to determine the extent and degree of any employment-related disability or residuals.

On July 8, 2010 OWCP referred appellant for an updated second opinion evaluation with Dr. Draper to determine the nature and extent of his employment-related disability. In his August 23, 2010 report, Dr. Draper concluded that appellant's accepted cervical and lumbar strains had resolved. He opined that appellant had no residuals and no physical limitations from his accepted condition. Dr. Draper attributed appellant's current medical condition and work limitations to his cervical spine arthritis and preexisting cervical degenerative disc disease and unrelated to the accepted March 23, 2001 employment injury. He also stated that the medical record before him was incomplete as it did not contain medical evidence. However, the Board finds that Dr. Draper, in addressing causal relationship provided no medical rationale to support his conclusory opinion regarding whether appellant's accepted condition had resolved, except to say that they were soft tissue injuries. Dr. Draper did not explain how his examination supported the conclusion. As noted, part of OWCP's burden of proof in terminating compensation benefits includes furnishing rationalized medical opinion evidence. Since Dr. Draper failed to provide

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<sup>6</sup> *B.K.*, Docket No. 08-2002 (issued June 16, 2009); *Kathryn E. Demarsh*, *supra* note 5; *James F. Weikel*, 54 ECAB 660 (2003).

<sup>7</sup> *Cecelia M. Corley*, 56 ECAB 662 (2005) (the Board has held that a medical opinion not fortified by medical rationale is of little probative value); *see also T.M.*, Docket No. 08-975 (issued February 6, 2009).

adequate rationale in support of his conclusion that appellant's accepted conditions had resolved, his report is of limited probative value.<sup>8</sup> For these reasons, his opinion is insufficient to OWCP's determination that appellant had no further condition or disability causally related to the accepted condition.

**CONCLUSION**

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's compensation as of February 3, 2011 on the grounds that he had no further residuals or disability due to his accepted employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated May 16, 2011 is reversed.

Issued: March 27, 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

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<sup>8</sup> *T.F.*, 58 ECAB 128 (2006); *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006) (a medical report is of limited probative value on a given medical question if it is unsupported by medical rationale); *see also S.D.*, 58 ECAB 713 (2007); *T.M.*, *supra* note 7; *Cecelia M. Corley*, *supra* note 7.