



## **FACTUAL HISTORY**

This case has previously been before the Board. By decision dated December 12, 2008, the Board reversed OWCP decisions dated July 26, 2007 and January 8, 2008. The Board found that OWCP did not meet its burden of proof to establish that the constructed position of sales attendant fairly and reasonably represented appellant's wage-earning capacity. OWCP did not consider his accepted malignant melanoma and carpal tunnel syndrome conditions prior to reducing his compensation.<sup>2</sup> The law and the facts of the previous Board decisions are incorporated herein by reference.

On January 10, 2010 appellant elected wage-loss compensation under FECA, effective February 1, 2010. He was placed on the periodic compensation rolls. By letter dated November 17, 2010, OWCP asked that he provide updated medical information regarding his employment capabilities and whether he could perform the duties of his date-of-injury position as a lock and dam operator.

In a January 26, 2011 report, Dr. Carl W. Soderstrom, Board-certified in internal medicine and dermatology, diagnosed postoperative malignant melanoma. He noted no evidence of recurrence with negative lymph nodes and advised that for about five years, there had been no evidence of recurrence on four or five positron emission tomography (PET) scans, and that appellant had recovered from the incident. Dr. Soderstrom found that appellant was able to pursue all work duties, could travel without assistance, and could perform all daily activities from a cutaneous standpoint. He recommended that appellant avoid midday sun, wear a wide-brimmed hat and a long-sleeved light weight shirt and apply total block sunscreen.

In a letter dated February 7, 2011, OWCP proposed to terminate appellant's compensation benefits on the grounds that the weight of medical evidence, as represented by Dr. Soderstrom's report, established that appellant was no longer disabled due to the accepted melanoma condition. Appellant submitted a magnetic resonance imaging (MRI) scan of the lumbar spine dated March 1, 2011.

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<sup>2</sup> Docket No. 08-1111 (issued December 12, 2008). On January 19, 2006 OWCP accepted that appellant, a lock and dam operator, sustained employment-related melanoma of the right cheek. Appellant had previously had excision of the lesion on June 23, 2005. On April 10, 2006 the employing establishment informed him that it could not accommodate his restriction to avoid sunlight. Appellant stopped work and was placed on the periodic rolls. On October 31, 2006 OWCP accepted that he sustained work-related bilateral carpal tunnel syndrome under file number xxxxxx358. By decision dated January 24, 2007, OWCP reduced appellant's compensation benefits, effective February 17, 2007, based on his capacity to earn wages as a sales attendant. On March 22, 2007 OWCP accepted that he sustained work-related displacement of lumbar intervertebral disc without myelopathy under file number xxxxxx567. On April 24, 2007 appellant underwent an L4-5 posterior lumbar interbody fusion procedure. In decisions dated July 26 and October 9, 2007 and January 8, 2008, OWCP denied modification of the January 24, 2007 wage-earning capacity decision. On March 24, 2008 it combined appellant's claim numbers xxxxxx793, xxxxxx358 and xxxxxx567. On December 17, 2009 appellant was granted a schedule award for two percent impairment of the right arm and two percent impairment on the left. In a June 10, 2010 decision, an OWCP hearing representative affirmed the December 17, 2009 schedule award decision. Subsequent to appellant's appeal in this case, in a March 6, 2012 decision, the Board affirmed an OWCP finding that appellant had no more than one percent impairment of the right leg and one percent impairment on the left. Docket No. 11-1742 (issued March 6, 2012).

By decision dated March 9, 2011, OWCP finalized the termination of wage-loss and medical benefits, effective March 13, 2011.

Appellant, through his attorney, timely requested a hearing and submitted medical evidence from the Veterans Administration Medical Center (VAMC). In a February 3, 2009 treatment note, Dr. Theodore Alkousakis, a Board-certified dermatologist, noted that appellant recently had basal cell carcinomas excised from the right temple and left melolabial fold which were well healed. He reported a history of malignant melanoma on the right cheek that was excised in June 2005, and a basal cell carcinoma on the left upper chest, previously excised. In an August 7, 2009 treatment note, Dr. Jill L. Lightfoot, a Board-certified dermatologist, described appellant's dermatological history and advised that he had no new or changing lesions or other skin concerns. In an August 7, 2009 report, Dr. Deborah S. Alt, a Board-certified otolaryngologist, noted that appellant was seen for follow up for the right cheek malignant melanoma. She recommended follow up in one year. In a February 9, 2010 report, Dr. Emily K. Fridlington, a Board-certified dermatologist, noted appellant's history of excised basal cell carcinomas and malignant melanoma. She performed a total skin examination, advised that appellant was stable and recommended follow up in six months. On August 20, 2010 Dr. Alt noted that appellant was being seen for follow up of his malignant melanoma. She advised that there were no suspicious lesions on skin examination of the head and neck and recommended follow up in one year. Julie A. Truman, a physician's assistant in dermatology, provided treatment notes dated July 22, 2010 and February 8, 2011. Dr. A. Paul Rauwolf, Board-certified in family medicine, provided a work capacity evaluation dated February 27, 2011 in which he advised that, on a permanent basis, appellant must work indoors and avoid sunlight which could cause melanoma.

At the July 8, 2011 hearing, appellant maintained that, based on Dr. Rauwolf's recommendation, he could not return to his previous employment due to his melanoma condition or perform his regular work duties due to the accepted carpal tunnel syndrome and a worsening back condition. Appellant submitted additional medical evidence, including a July 22, 2011 procedure note in which Ms. Truman performed a shave biopsy of a scalp lesion. The pathologic diagnosis was basal cell carcinoma.<sup>3</sup>

In a September 22, 2011 decision, an OWCP hearing representative found that appellant's disability and need for medical treatment regarding the accepted melanoma condition had ceased and he was capable of returning to his previous job. The hearing representative remanded the case to OWCP for further development with regard to whether the accepted carpal tunnel syndrome and low back condition rendered appellant disabled from work.

### **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

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<sup>3</sup> On both March 10 and August 8, 2011 appellant submitted medical evidence not relevant to his melanoma condition. He also submitted an August 28, 2011 work capacity evaluation in which Dr. Rauwolf diagnosed displacement of lumbar intervertebral disc without myelopathy and provided restrictions to appellant's physical activity.

without establishing that the disability ceased or that it was no longer related to the employment.<sup>4</sup> OWCP's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>5</sup>

### ANALYSIS

The Board finds that OWCP met its burden of proof to terminate appellant's compensation benefits for the accepted malignant melanoma of the right cheek that was excised on June 23, 2005. As the case is in an interlocutory position with regard to the accepted bilateral carpal tunnel syndrome and displacement of lumbar intervertebral disc without myelopathy, the Board has no jurisdiction to review this matter.<sup>6</sup>

The medical evidence relevant to OWCP's termination of compensation benefits for the accepted malignant melanoma includes Dr. Soderstrom's January 26, 2011 report. Dr. Soderstrom diagnosed postoperative malignant melanoma. He indicated that for about five years there had been no evidence of recurrence on four or five PET scans. Dr. Soderstrom advised that appellant had recovered from the incident, was able to pursue all work duties, could travel without assistance, and could perform all daily activities from a cutaneous standpoint. While he recommended that appellant avoid midday sun, wear a wide-brimmed hat and a long-sleeved light weight shirt, and apply total block sunscreen, these recommendations were prophylactic in nature and would not prevent appellant from performing the duties of a lock and dam operator.

Appellant submitted a number of medical reports from the Iowa City VAMC. Drs. Alkousakis, Lightfoot, Alt and Fridlington merely noted a history of malignant melanoma with no current findings and did not discuss work restrictions. As Ms. Truman is a physician's assistant, her reports are not considered medical evidence as a physician's assistant is not considered a physician under FECA.<sup>7</sup> In his February 27, 2011 work capacity evaluation, Dr. Rauwolf advised that, on a permanent basis, appellant must work indoors and avoid sunlight which could cause melanoma. Medical opinions which are speculative or equivocal in character have little probative value.<sup>8</sup> Dr. Rauwolf did not provide a rationalized, nonspeculative explanation as to why the accepted malignant melanoma caused continuing disability, six years after it was excised and five years after appellant stopped work. A physician's statement that exposure to employment factors would cause a recurrence of symptoms in the future is not a sufficient basis on which to establish a claim as the fear of a recurrence of a condition if a claimant returns to work does not constitute a basis for compensation.<sup>9</sup> Dr. Rauwolf's report is

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<sup>4</sup> *Jaja K. Asaramo*, 55 ECAB 200 (2004).

<sup>5</sup> *Id.*

<sup>6</sup> 20 C.F.R. § 501.2(c); *see A.D.*, Docket No. 09-2030 (issued May 20, 2010).

<sup>7</sup> *Ricky S. Storms*, 52 ECAB 349 (2001). *See* 5 U.S.C. § 8101(2).

<sup>8</sup> *Frank Luis Rembisz*, 52 ECAB 147 (2000).

<sup>9</sup> *Virginia Dorsett*, 50 ECAB 478 (1999).

therefore of limited probative value.<sup>10</sup> Appellant also had a history of basal cell carcinomas and had a further excision by Ms. Truman on July 22, 2011. A basal cell carcinoma condition has not been accepted as employment related.

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>11</sup> In this case, the Board finds that the weight of the medical evidence rests with Dr. Soderstrom's January 26, 2010 report in which he clearly advised that appellant had recovered from the malignant melanoma and could pursue all work duties. The Board finds that, as there is no reasoned medical evidence supporting appellant's claim for continuing disability or need for medical treatment for the accepted malignant melanoma of the right cheek, OWCP properly terminated his compensation benefits effective March 13, 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 compensation benefits for the accepted malignant melanoma of the right cheek.

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<sup>10</sup> Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factor. The opinion of a physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factor identified by the claimant. *Sedi L. Graham*, 57 ECAB 494 (2006).

<sup>11</sup> *C.B.*, Docket No. 08-1583 (issued December 9, 2008).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 22, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 2, 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