

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

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D.A., Appellant )

and )

DEPARTMENT OF HOMELAND SECURITY, )  
U.S. COAST GUARD, Curtis Bay, MD, Employer )

**Docket No. 12-480  
Issued: October 15, 2012**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
ALEC J. KOROMILAS, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On January 3, 2012 appellant filed a timely appeal from a December 8, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) terminating 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.

**ISSUES**

The issues are: (1) whether OWCP properly terminated appellant's compensation effective December 18, 2011 on the grounds that he had no further disability causally related to his April 20, 1983 employment injury; and (2) whether it properly terminated his authorization for medical benefits.

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

## **FACTUAL HISTORY**

On April 21, 1983 appellant, then a 48-year-old chipper, filed a traumatic injury claim alleging that on April 20, 1983 he injured his lower back in the performance of duty. OWCP accepted the claim for an aggravation of low back strain and a herniated nucleus pulposus at L4-5. On October 5, 1983 appellant underwent a laminectomy at L4-5, a hemilaminotomy at S1, a right discectomy at L4-5 and foraminotomies at L4-S1 on the right. He stopped work on April 22, 1983 and received compensation for total disability.

On July 17, 1987 appellant returned to work in private employment as a security guard. OWCP paid him compensation for partial disability based on his loss of wage-earning capacity. Appellant stopped work in 2010.

By letter dated March 8, 2011, OWCP requested that appellant submit an updated medical report from his attending physician.<sup>2</sup> On April 1, 2011 appellant informed OWCP that his physician would not provide a report and requested that it schedule a medical examination. By letter dated September 1, 2011, OWCP referred appellant to Dr. Stuart J. Gordon, a Board-certified orthopedic surgeon, for a second opinion examination. It provided Dr. Gordon with a statement of accepted facts indicating that it had accepted low back strain by aggravation and a herniated disc at L4-5 due to the April 20, 1983 work injury.

In a report dated September 13, 2011, Dr. Gordon reviewed the medical evidence of record and discussed appellant's history of back pain since a 1962 nonemployment-related injury with multiple back surgeries beginning in the 1960s. On examination he found flattening of the lumbar lordosis with full range of motion, a negative straight leg raise test and a negative Patrick's test. Dr. Gordon found intact motor strength and sensation. He diagnosed extensive preexisting lumbar problems dating from 1962, a history of a 1965 lumbar decompression and fusion and preexisting lumbar degenerative disease. Dr. Gordon further diagnosed lumbar strain and an aggravation of lumbar degenerative disease with a lumbar decompression due to the April 20, 1983 work injury, which he opined had resolved. He found no objective evidence of residuals of the work injury. Dr. Gordon stated, "Based on the evaluation, it appears that the aggravation is, from the subjective standpoint, permanent. However, based on the lack of objective findings, one would consider it temporary." He had no "recommendations for treatment, at this point." Dr. Gordon found that appellant had work restrictions due to his preexisting condition.

On October 24, 2011 OWCP advised appellant that it proposed to terminate his compensation and authorization for medical benefits. It provided him 30 days to submit additional medical evidence or argument. On November 3, 2011 appellant challenged the proposed termination. He indicated that he informed Dr. Gordon of his pain radiating into his left leg but the physician did not want to discuss his problem.

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<sup>2</sup> The last medical report of record was dated August 8, 2008 from Dr. Ashok Krishnaswamy, a Board-certified orthopedic surgeon, who diagnosed lumbar disc disease with spinal stenosis and found that appellant should "continue on present disability at this time."

By decision dated December 8, 2011, OWCP terminated appellant's compensation and authorization for medical benefits effective December 18, 2011. It found that Dr. Gordon's opinion constituted the weight of the evidence and established that he had no residuals of his accepted work injury.

### **LEGAL PRECEDENT -- ISSUES 1 & 2**

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 in terminating compensation 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 compensation.<sup>5</sup> To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.<sup>6</sup>

### **ANALYSIS -- ISSUES 1 & 2**

OWCP accepted that appellant sustained an aggravation of low back strain and a herniated nucleus pulposus at L4-5. It paid him compensation for total disability from 1983 to 1987 and for partial disability from 1982 onward. After failing to receive updated medical evidence, OWCP referred appellant to Dr. Gordon on September 1, 2011 for a second opinion examination.

On September 13, 2011 Dr. Gordon noted that appellant had a history of back problems and surgeries beginning in 1962 and diagnosed preexisting lumbar degenerative disc disease. He further diagnosed resolved lumbar strain and a resolved aggravation of lumbar degenerative disc disease with a lumbar decompression as a result of the April 20, 1983 employment injury. On physical examination, Dr. Gordon found flattening of the lumbar lordosis, full range of motion, a negative straight leg and Patrick's test and intact sensation and motor strength. He concluded that appellant had no objective evidence of the work injury and listed work restrictions which he attributed to his preexisting lumbar condition. Dr. Gordon, however, did not address whether appellant had any residuals of his herniated disc at L4-5. As OWCP accepted a herniated nucleus pulposus at L4-5, it has the burden to establish that disability from this condition ceased prior to terminating benefits.<sup>7</sup> Its burden of proof includes the necessity of furnishing

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<sup>3</sup> *Elaine Sneed*, 56 ECAB 373 (2005); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

<sup>4</sup> *Gewin C. Hawkins*, 52 ECAB 242 (2001).

<sup>5</sup> *T.P.*, 58 ECAB 524 (2007); *Pamela K. Guesford*, 53 ECAB 727 (2002).

<sup>6</sup> *Id.*

<sup>7</sup> *See David W. Pickett*, 54 ECAB 272 (2002).

rationalized medical evidence based on a proper factual and medical background.<sup>8</sup> Dr. Gordon did not discuss the accepted condition of a herniated disc at L4-5 and thus his report is insufficient to show that appellant had no further disability or residuals resulting from this condition. Additionally, while he determined that any physical limitations resulted from a preexisting lumbar condition, he failed to offer sufficient medical reasoning in support of his conclusion.<sup>9</sup> The Board thus finds that OWCP did not meet its burden of proof to terminate appellant's compensation and medical benefits due to the accepted April 20, 1983 employment injury.

**CONCLUSION**

The Board finds that OWCP improperly terminated appellant's compensation and authorization for medical benefits effective December 18, 2011 on the grounds that he had no further disability causally related to his April 20, 1983 employment injury

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 8, 2011 decision of the Office of Workers' Compensation Programs is reversed.

Issued: October 15, 2012  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

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

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<sup>8</sup> See *Daniel F. O'Donnell, Jr.*, 54 ECAB 456 (2003).

<sup>9</sup> See *Elaine Sneed*, *supra* note 3.