

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

V.B., Appellant)

and)

DEPARTMENT OF THE ARMY, U.S. ARMY)
MATERIEL COMMAND, Texarkana, TX,)
Employer)

**Docket No. 12-599
Issued: October 2, 2012**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 17, 2012 appellant filed a timely appeal from a July 21, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 met its burden of proof to terminate appellant's medical benefits on the grounds that he no longer had any residuals causally related to his accepted employment-related injuries; and (2) whether appellant has established that his claim should be expanded to include additional lumbar conditions due to the May 10, 1994 employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On May 17, 1994 appellant, then a production coordinator, filed a traumatic injury claim (Form CA-1) alleging that he sustained a back injury on May 10, 1994 when he fell to the floor after his work chair fell backwards. OWCP accepted the claim for lumbar strain and later expanded the claim to include herniated disc, L4-5.

Appellant stopped work on June 9, 1994. OWCP authorized his December 27, 1994 surgery for lumbar laminectomy with bilateral L4-5 discectomy and bony decompression L4-5 bilaterally. Appellant was released to return to his regular work duties which were sedentary in nature on April 7, 1995. He refused to return to work and retired in 1997. OWCP authorized surgery again and on November 22, 2004, appellant underwent a decompressive laminectomy L3 and upper L4 with bilateral foraminotomy.

OWCP approved appellant's November 22, 2004 surgery for decompressive laminectomy L3 and upper L4 with bilateral foraminotomy. In a November 22, 2004 operative report, Dr. David A. Cavanaugh noted that he presented with progressive neurogenic claudication and back and leg pain. The magnetic resonance imaging (MRI) scan showed significant stenosis at L3-4 with bulging of the disc on the left side and postsurgical changes were seen at L4-5, which required surgery for his lumbar spinal stenosis at L3-4.

In medical reports dated December 12, 2006 to May 3, 2010, Dr. Kathleen Majors, a Board-certified anesthesiologist, reported that appellant lived an active lifestyle and worked with his family in the deer meat processing business. Appellant complained of continued lower back pain. Dr. Majors diagnosed postlumbar puncture syndrome (PLPS) in 1994 and 2004 from an on-the-job injury in May 1994 and bilateral lumbosacral radiculopathy. She recommended steroid injections.

By letter dated April 14, 2010, OWCP requested additional factual and medical evidence in order to further review appellant's request for continued medical treatment.

In a May 10, 2010 narrative statement, appellant reported that for the last two years, he was unable to take steroid injections due to a blood clot and blood thinner medication. He stated that he was advised that he could temporarily come off of the blood thinner to have a series of injections for his back pain. Appellant further noted that he tries to remain as active as possible because sedentary situations compound his back pain and problems.

On May 11, 2010 OWCP noted that appellant's request for spinal injections could not be approved until further development.

By decision dated July 7, 2010, OWCP terminated appellant's compensation benefits and denied his request for medical treatment for failing to submit medical evidence which explained the need for ongoing treatment. It noted that any prior authorization for medical treatment was terminated.

By letter dated July 28, 2010, appellant requested review of the written record before the Branch of Hearings and Review.

In support of his request, appellant submitted a July 26, 2010 letter from Dr. Majors, who stated that she had been treating him since March 20, 1997 for pain related to his May 10, 1994 work injury. Dr. Majors noted that treatment had been authorized since March 20, 1997 for his chronic pain while under her care. She stated that Dr. Cavanaugh referred appellant after his back surgery in 2004. Dr. Majors further stated that the chronic back pain after his surgery persisted and was related to the original work injury. She stated that there had been no changes since her office initially began treating appellant in 1997. Dr. Majors concluded that his chronic pain was likely a lifelong problem, which required office visits every three months for evaluation and medication.

By decision dated December 7, 2010, the hearing representative vacated the July 7, 2010 decision and remanded the case with instructions for OWCP to further develop the medical evidence. OWCP noted that the case was initially accepted for a herniated disc at the L4-5 level. However, surgery was authorized at the L3-4 level in November 2004 despite the fact that OWCP had not formally accepted a condition at the L3-4 level. On remand, the hearing representative instructed OWCP to refer appellant, along with a statement of accepted facts and the case record, to an appropriate specialist to determine whether appellant's claim should be expanded to include herniation at the L3-4 level, whether he continued to experience residuals of his employment-related condition and whether pain management and/or epidural steroid injections were indicated.

In support of his claim, appellant submitted a February 14, 2011 medical report from Dr. Rachel H. King, Board-certified in internal medicine, who reported that he continued to suffer from chronic low back pain and underwent surgery in 1994 to fuse L4-5. Dr. King noted that he was unable to take epidural steroid injections over the last two years because of his Coumadin medication for his lower extremity deep vein thrombosis and discontinued Coumadin in order to treat his back condition with steroid injections.

OWCP referred appellant, the case file, a statement of accepted facts and a series of questions to Dr. Robert Holladay, a Board-certified orthopedic surgeon, for a second opinion medical examination. In his April 5, 2011 medical report, Dr. Holladay provided a summary of appellant's past medical reports and diagnosed degenerative disc disease of the lumbar spine, postoperative lumbar laminectomy/discectomy at L4-5 and postoperative laminectomy at L3-4. He stated that appellant likely had underlying preexisting degenerative disc condition of the lumbar spine and sustained a strain/sprain after the May 10, 1994 employment incident. Dr. Holladay noted that he was not provided with any diagnostic studies other than appellant's May 17, 1994 nerve conduction study. The nerve conduction study showed moderate bilateral L5 and S1 radiculopathies, consistent with disc degeneration of the lumbar spine and most likely lumbar stenosis, all of which were preexisting conditions not caused by a specific work injury. When asked if appellant had any residuals resulting from the May 10, 1994 incident, Dr. Holladay stated that appellant had residuals of back pain, leg pain, numbness and tingling and had residuals from his lumbar spine surgical procedures, which were accepted for medical treatment by OWCP. He recommended pain management with epidural steroid injections once a year and opined that appellant's current lumbar condition was contributed from the May 10, 1994 employment incident. Dr. Holladay concluded that appellant would have reached maximum medical improvement within four to six months after his surgical procedures and was physically capable of doing his activities on the cattle ranch.

By letter dated May 5, 2011, OWCP requested Dr. Holladay provide clarification on his report and asked whether appellant's lumbar condition would have progressed to the point where it was today irrespective of the May 10, 1994 employment incident. It also provided the physician with additional diagnostic studies performed on June 6, 1994, January 16, 1997, October 30, 2003 and October 14, 2004, which were not included with the initial case record.

In a June 3, 2011 addendum report, Dr. Holladay stated that appellant's June 6, 1994 MRI scan revealed underlying preexisting multiple level spondylitic and degenerative changes. There were changes noted at L4-5 with a broad base disc protrusion secondary to degeneration with associated facet degeneration. Dr. Holladay noted that traumatic events short of fracture or dislocation were not likely to result in progressive degeneration of the spine, which was predominantly related to genetics according to medical literature. He opined that appellant sustained a traumatic event resulting in low back pain, however, this event was not the producing cause of the disc degeneration at multiple levels in the lumbar spine. Dr. Holladay further stated that the bulging disc noted at L4-5 was also not the result of this mechanism of injury and there was no documented objective evidence of an aggravation or acceleration of the preexisting disc degeneration. He stated that, in the absence of any reported injury, appellant's farming activities would not have caused an aggravation or acceleration of his preexisting condition of degeneration of the lumbar spine. Dr. Holladay concluded that, based on the diagnostic studies of the lumbar spine from 1997, 2003 and 2004, appellant developed progressive degeneration of the lumbar spine, which was not related to or caused by the work event of May 10, 1994.

By decision dated July 21, 2011, OWCP terminated appellant's compensation benefits. It found that Dr. Holladay's report indicated that appellant's current lumbar spine condition was not related to the May 10, 1994 employment incident. Thus, medical treatment was not authorized and prior authorization was terminated.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits. Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.²

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.³ 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.⁴

² See *Del K. Rykert*, 40 ECAB 284 (1988).

³ *Roger G. Payne*, 55 ECAB 535 (2004).

⁴ *Pamela K. Guesford*, 53 ECAB 726 (2002).

ANALYSIS -- ISSUE 1

By decision dated July 21, 2011, OWCP terminated appellant's medical benefits and denied authorization for epidural steroid injections on the grounds that the accepted conditions of lumbar strain and L4-5 disc herniation ceased without residuals. The Board finds that OWCP failed to meet its burden of proof in terminating appellant's medical benefits.

OWCP accepted that appellant sustained a lumbar strain and herniated disc at L4-5 on May 10, 1994. It authorized his December 27, 1994 surgery for lumbar laminectomy with bilateral L4-5 discectomy and bony decompression L4-5 bilaterally. Appellant subsequently retired in 1997. OWCP later approved surgery for a decompressive laminectomy L3 and upper L4 with bilateral foraminotomy on November 22, 2004.

In medical reports dated December 12, 2006 to July 26, 2010, Dr. Majors stated that she had been treating appellant since March 20, 1997 for pain related to his May 10, 1994 work injury. She noted that treatment had been authorized since March 20, 1997 for his chronic pain while under her care. Dr. Majors stated that appellant was referred by Dr. Cavanaugh after his back surgery in 2004. She further stated that the chronic back pain after his surgery persisted and was related to the original work injury. Dr. Majors noted that there had been no changes to appellant's condition since her office initially began treating him in 1997. She concluded that his chronic pain was likely a lifelong problem requiring office visits every three months for evaluation and medication. Dr. Majors diagnosed PLPS in 1994 and 2004 from a May 1994 on-the-job injury and bilateral lumbosacral radiculopathy and recommended steroid injections.

In its December 7, 2010 decision, the hearing representative remanded the case for further medical development to determine if the claim should be expanded to include herniation at the L3-4 level and whether appellant had any remaining employment-related residuals from the May 10, 1994 injury which required continued treatment.⁵ Accompanying the referral was a statement of accepted facts, questions regarding appellant's employment-related conditions and the case record containing his medical records. Dr. Holladay, a second opinion referee physician, provided an April 5, 2011 report and a June 3, 2011 addendum to his report after OWCP requested clarification. On July 21, 2011 OWCP issued a decision terminating appellant's compensation for medical treatment based upon the reports of Dr. Holladay.

The Board finds that OWCP did not meet its burden to terminate appellant's compensation. OWCP accepted a claim for lumbar strain and disc herniation at L4-5. As noted above, to terminate medical benefits, it retained the burden of proving that the residuals of the conditions had ceased. Dr. Holladay's April 5, 2011 report stated that appellant likely had an underlying preexisting degenerative disc condition of the lumbar spine, which was not caused by a specific work injury and that he sustained a strain/sprain of the lumbar spine after the May 10, 1994 employment incident. He noted that degenerative disc disease would have likely progressed over time resulting in clinical complaints. When asked if appellant had any residuals resulting from the May 10, 1994 incident, Dr. Holladay stated that appellant had residuals of back pain, leg pain, numbness and tingling. He further noted that appellant had residuals from

⁵ See R.A., Docket No. 09-1754 (issued May 24, 2010); *Rose V. Ford*, 55 ECAB 449 (2004).

his 1994 and 2004 surgical procedures, which were accepted as related to the May 10, 1994 employment incident. Dr. Holladay recommended pain management with epidural steroid injections once a year for the employment-related injury and opined that appellant's current lumbar condition was contributed from the May 10, 1994 employment incident.

In his initial April 5, 2011 report, Dr. Holladay stated that appellant continued to experience residuals from his 1994 and 2004 surgeries which were approved by OWCP. The basic rule respecting consequential injuries is that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury likewise arises out of the employment, unless it is the result of an independent intervening event. Once the work-connected character of an injury has been established, the subsequent progression of that condition remains compensable so long as the worsening is not shown to have been produced by an independent, nonindustrial cause.⁶

In his June 3, 2011 addendum, Dr. Holladay reviewed the diagnostic studies from 1994, 1997, 2003 and 2004 and provided clarification on whether irrespective of the May 10, 1994 employment incident, appellant's lumbar condition would have progressed to its current state.⁷ He stated that appellant's June 6, 1994 MRI scan revealed underlying preexisting multiple level spondylitic and degenerative changes. There were changes noted at L4-5 with a broad base disc protrusion secondary to degeneration with associated facet degeneration. Dr. Holladay noted that traumatic events short of fracture or dislocation were not likely to result in progressive degeneration of the spine as the condition was predominantly related to genetics based in medical literature. He opined that appellant sustained a traumatic event resulting in low back pain, however, this event was not the producing cause of the disc degeneration at multiple levels in the lumbar spine. Dr. Holladay further stated that the bulging disc noted at L4-5 was also not the result of this mechanism of injury and there was no documented objective evidence of an aggravation or acceleration of the preexisting disc degeneration. He concluded that, based on the diagnostic studies of the lumbar spine from 1997, 2003 and 2004, appellant developed progressive degeneration of the lumbar spine, which was not related to or caused by the work event of May 10, 1994.⁸

The Board finds that Dr. Holladay's addendum does not provide clarification on the issues raised. OWCP accepted appellant's claim for lumbar strain and herniated disc at L4-5 in 1994. Despite not having been provided the 1994, 1997, 2003 and 2004 diagnostic tests in his initial report, Dr. Holladay's opinion that appellant had a preexisting degenerative disc disease of the lumbar spine prior to the May 10, 1994 employment incident remained consistent in both his

⁶ See *Kathy A. Kelley*, 55 ECAB 206 (2004); *Carlos A. Marerro*, 50 ECAB 170 (1998).

⁷ The Board notes that though Dr. Holladay was not provided with the above referenced diagnostic studies in his initial April 4, 2011 report, he was provide with appellant's physician's reports, which did address and summarize these diagnostic studies.. The only diagnostic study provided with the case record at the time was a May 17, 1994 electromyography and nerve conduction study which he noted as consistent with preexisting degeneration of the lumbar spine and lumbar spinal stenosis.

⁸ Dr. Holladay noted that appellant's farming activity could have some protective properties with regards to his lumbar disc and in the absence of any reported injury while doing these activities, would not have caused an aggravation or acceleration of his preexisting condition of degeneration of the lumbar spine.

initial report and addendum. It is unclear how he reached the conclusion that appellant's injury of bulging disc at L4-5 was not a result of the May 10, 1994 employment incident, which was accepted and approved by OWCP over 16 years ago as a consequence of the traumatic employment incident. Dr. Holladay failed to provide an unequivocal opinion and provided no foundation for his conclusion. Further, his reports fail to provide an explanation for the discrepancies in his conflicting opinions as to whether appellant had residuals of the accepted conditions. The Board has consistently held that a medical opinion not fortified by rationale is of limited probative value.⁹

The issue to be resolved was whether appellant was suffering from continued residuals of his accepted lumbar strain, L4-5 disc herniation and two authorized surgeries. Dr. Holladay's April 5, 2011 report notes that appellant continued to suffer from residuals of his 1994 and 2004 surgeries, that his current lumbar condition is contributed to the May 10, 1994 employment incident and that he would benefit from yearly steroid injections to treat his employment-related injury. Thus, Dr. Holladay's reports are not sufficiently well rationalized to establish that appellant ceased to have residuals of his employment injuries.¹⁰

The Board therefore finds that OWCP erred by terminating appellant's compensation in its July 21, 2011 decision. It remains OWCP's burden of proof to terminate compensation and the Board finds that OWCP terminated authorization for medical benefits without meeting its burden in this case. The Board will reverse OWCP's determination terminating appellant's compensation.

LEGAL PRECEDENT -- ISSUE 2

Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he bears the burden of proof to establish that the condition is causally related to the employment injury.¹¹ To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.¹² 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 factors. The opinion of the 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 factors identified by the claimant. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability,

⁹ A.D., 58 ECAB 149 (2006).

¹⁰ V.C., Docket No. 11-1561 (issued February 15, 2012).

¹¹ *Jaja K. Asaramo*, 55 ECAB 200 (2004).

¹² See 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.¹³

ANALYSIS -- ISSUE 2

The Board finds this case is not in posture for decision with regard to the issue of whether appellant's claim should be expanded to include disc herniation at L3-4. The Board notes that though his November 22, 2004 surgery for decompressive laminectomy at L3-4 level bilateral foraminotomy was approved, OWCP never formally accepted his claim for a lumbar condition at the L3-4 level.

Dr. Holiday failed to provide an unequivocal opinion on whether appellant's claim should be expanded to include additional lumbar conditions at L3-4. The Board has consistently held that a medical opinion not fortified by rationale is of limited probative value.¹⁴

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done. Once OWCP undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.¹⁵

When OWCP selects a physician for an opinion on appellant's employment-related injury, it has an obligation to secure, if necessary, clarification of the physician's report and to have a proper evaluation made.¹⁶ Because it referred appellant to a second opinion physician, it has the responsibility to obtain a report that will resolve the issue of whether he continued to have residuals of his employment-related injury and whether the claim should be expanded to include additional lumbar conditions at the L3-4 level.¹⁷ In this case, OWCP was provided specific instructions on remand from the hearing examiner to develop the evidence by seeking a second opinion on whether appellant had additional lumbar conditions at the L3-4 level as a result of his May 10, 1994 injury, whether appellant continued to experience residuals of his employment-related condition and whether pain management and/or epidural steroid injections were indicated. After receiving Dr. Holladay's April 5, 2011 report, OWCP sought clarification on whether appellant's lumbar condition would have progressed to its current state irrespective of the May 10, 1994 incident. Dr. Holladay provided a June 3, 2011 addendum in response to OWCP's request which stated that appellant's preexisting degenerative disc disease and bulging disc noted at L4-5 were not caused or aggravated by the May 10, 1994 employment incident. He failed, however, to provide an opinion on whether appellant's claim should be expanded to include additional lumbar conditions at L3-4. As neither of Dr. Holladay's reports fully

¹³ *James Mack*, 43 ECAB 321 (1991).

¹⁴ *A.D.*, 58 ECAB 149 (2006).

¹⁵ *William J. Cantrell*, 34 ECAB 1223 (1983).

¹⁶ *Alva L. Brothers, Jr.*, 32 ECAB 812 (1981).

¹⁷ *See Ramon K. Farrin, Jr.*, 39 ECAB 736 (1988).

addressed this issue, OWCP failed to follow the hearing representatives instructions on remand and seek clarification as to whether appellant's lumbar conditions at L3-4 were caused by the May 10, 1994 injury. OWCP did not properly discharge its responsibilities in developing the record.¹⁸ Without such information, an informed decision cannot be reached on the relevant schedule issue.

The Board finds that OWCP failed to undertake development of appellant's claim in accordance with OWCP's December 7, 2010 decision and the case will be set aside and remanded for further development of the medical evidence and a reasoned opinion regarding whether appellant has additional lumbar conditions at L3-4 due to his accepted employment injuries.

CONCLUSION

The Board finds that this case is not in posture for a decision.

ORDER

IT IS HEREBY ORDERED THAT the July 21, 2011 decision of the Office of Workers' Compensation Programs is reversed and the case remanded for further development.

Issued: October 2, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹⁸ *Richard F. Williams*, 55 ECAB 343 (2004).