

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

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**H.G., Appellant**

**and**

**U.S. POSTAL SERVICE, DOWNTOWN  
DELIVERY ANNEX, Baltimore, MD, Employer**

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**Docket No. 12-230  
Issued: September 10, 2012**

*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  
PATRICIA HOWARD FITZGERALD, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On November 22, 2011 appellant, through his attorney, filed a timely appeal from an October 20, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) affirming 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 to consider the merits of the case.

**ISSUES**

The issues are: (1) whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits as of September 16, 2009; and (2) whether appellant had any continuing employment-related residuals or disability after September 16, 2009.

On appeal, appellant, through counsel, contends that OWCP's decision is contrary to fact and law.

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

## **FACTUAL HISTORY**

This case has been before the Board before. By decision dated June 23, 2009, the Board reversed OWCP's termination of benefits.<sup>2</sup> OWCP, *inter alia*, terminated appellant's wage-loss compensation and medical benefits as it found that the weight of the medical evidence was represented by Dr. Robert Smith, a Board-certified orthopedic surgeon and second opinion examiner, who determined that appellant had complete resolution of residuals due to the work injury except for a small knot on the scalp that was not disabling. Dr. Smith noted that appellant could perform his usual job. The Board discussed the medical reports of his treating physicians: Dr. Philip Bovell, an orthopedic surgeon, and Dr. Shobha Chidambaram, a neurologist. The Board noted that neither Dr. Bovell nor Dr. Chidambaram indicated that treatment for an employment-related condition had ended. Accordingly, the Board found that there was a conflict in the medical evidence with regard to whether appellant's lumbar and cervical condition had resolved and that, accordingly, OWCP did not meet its burden of proof to terminate his benefits. The facts as set forth in the prior decision are hereby incorporated into this decision by reference.<sup>3</sup>

By letter dated July 31, 2009, OWCP referred appellant to Dr. Olumuyia Paul, a Board-certified orthopedic surgeon, for an impartial medical examination. In a May 19, 2006 report, Dr. Paul stated that he was in agreement with Dr. Smith's opinion that appellant has completely recovered from his accepted medical conditions. He noted that appellant admitted that he had a longstanding history of back as well as low back pain resulting from previous injuries and that he was on disability from the military as a result of these problems. Dr. Paul noted that appellant also reported a prior history of neck as well as back injuries related to a motor vehicle accident that occurred in 1994 and 1998. He discussed appellant's May 19, 2006 employment injury. Dr. Paul stated that 15 months was more than enough time to recover from cervical as well as lumbar strains and noted that he saw no objective medical findings which indicated that appellant's current disability was related to his work injury. He stated that it was dubious that appellant sustained a strain to his cervical as well as lumbar spine given the mechanism of his injury. Dr. Paul noted that he would expect that a blow to the head as described by appellant should result in a depressed skull fracture, furthermore axial loading to the cervical spine resulting from a blow to the head may also result in fractures of the C1 vertebral elements or flexion-distraction injuries to the cervical spine none of which are noted on his magnetic resonance imaging scan. He opined that it was difficult to imagine that appellant sustained an injury to his lumbar spine as a result of a blow to his head. Dr. Paul opined that by definition strains and sprains are injuries sustained to soft tissue such as muscle or ligaments and such injuries should have resolved by August 31, 2007. He noted that, in reviewing appellant's records, it is apparent that he has a chronic condition which he did not believe was aggravated by

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<sup>2</sup> Docket No. 09-88 (issued June 23, 2009). The Board also found that, due to the conflict in the medical evidence, OWCP improperly denied appellant's claim for compensation from May 19, 2006 to August 31, 2007. The Board did affirm OWCP's denial of a schedule award.

<sup>3</sup> On May 20, 2006 appellant, then a 57-year-old part-time flexible city carrier, filed a traumatic injury claim alleging that on May 19, 2006, a coworker slapped the back door of a hatchback on his head which resulted in head and neck pain. OWCP accepted his claim for neck and lumbar sprain. Appellant stopped work on the date of the injury and did not return. He was terminated from his position on June 20, 2006.

the incident of May 2006. Dr. Paul opined that he did not believe that appellant's current disability was due solely to the residuals of his injury of May 19, 2006.

By decision dated September 16, 2009, OWCP terminated appellant's wage-loss and medical benefits effective the date of the decision.

Appellant submitted additional medical reports by Dr. Bovell. In a December 31, 2009 report, Dr. Bovell stated that appellant was complaining of the progressive degeneration of his condition. In a May 4, 2010 report, he noted that appellant continued to complain of persistent pain over the neck, shoulder, lumbar sacral spine and lower legs. Dr. Bovell noted that, as a result of a rheumatologist's evaluation, appellant was diagnosed to have fibromyalgia, which caused much of his discomfort, especially over the multiple parts of his body including the joints. He noted that the following diagnoses should be added: fibromyalgia and partial rotator cuff tear of the left shoulder. Dr. Bovell stated these diagnoses should be added to the previous chronic pain syndrome appellant has over the neck, shoulder and lumbar sacral spine.

On September 15, 2010 appellant, through his attorney, requested reconsideration and submitted further evidence.

In a September 13, 2010 report, Dr. Marcia B. Levi, a chiropractor, stated that based on history and her examination the applicable diagnoses are neuralgia, cervical/thoracic segmental dysfunction with a history of fibromyalgia and carpal tunnel syndrome. She noted that x-rays were not available for review.

In an April 23, 2010 report, Dr. Imelda Cabalar, a Board-certified internist, diagnosed appellant with joint pains, fibromyalgia, hypertension and hypercholesterolemia (diet controlled). In a September 8, 2010 report, she stated that she first saw appellant on April 23, 2010 as a referral from Dr. Bovell for evaluation of joint pains and diffuse muscle aches. Dr. Cabalar opined that appellant's current symptoms were triggered by his injury on May 19, 2006. She noted that, while he may have been diagnosed with cervical and lumbar strain at the time, his symptoms clearly got worse after the injury and this continued to the present time. Dr. Cabalar noted evidence of degenerative changes on his cervical spine, shoulders, hips, lumbar spine and both knees. She noted that degenerative changes in the joints may develop after traumatic injuries to the joints.

In a September 15, 2010 report, Dr. Bovell described the work-related accident and indicated, "As pointed out in previous summaries, it is my opinion that [appellant's] symptoms and diagnoses are as a result of a compression force or axial loading that took place when [appellant] was hit on his head." He noted that appellant's symptoms included tingling numbness, blurred vision and all the other discomfort of pain that radiated from the head, neck, into the shoulders, as well as radiating into the lower back and into his legs, all showed the strong compression force that appellant had on his head. Dr. Bovell noted that the forceful axial loading was very severe and so strong that it caused much discomfort that was seen and presented over the time period appellant was in treatment. He noted that appellant was still in treatment and that the prognosis was guarded.

By decision dated October 20, 2011, OWCP reviewed appellant's case on the merits but denied modification of the October 20, 2011 decision.

### **LEGAL PRECEDENT -- ISSUE 1**

Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

Section 8123(a) of FECA provides in pertinent part: If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.<sup>7</sup> In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>8</sup>

### **ANALYSIS -- ISSUE 1**

OWCP accepted appellant's claim for neck and lumbar sprain sustained on May 19, 2006 during his federal employment. It initially terminated his benefits effective September 20, 2007, but the Board reversed the termination of benefits, noting that there remained an unresolved conflict between his treating physicians, Drs. Bovell and Chidambaram and the opinion of the second opinion physician, Dr. Smith, with regard to whether appellant's accepted lumbar and cervical conditions had resolved.

Subsequent to the Board's decision, OWCP referred appellant to Dr. Paul for an impartial medical examination. Dr. Paul opined that appellant had completely recovered from the accepted medical conditions. The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Paul, the impartial medical specialist selected to resolve the conflict in the medical opinion.<sup>9</sup> Dr. Paul's report established

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<sup>4</sup> *S.N.*, Docket No. 12-123 (issued June 12, 2012).

<sup>5</sup> *Mary A. Lowe*, 52 ECAB 223 (2001).

<sup>6</sup> *Id.*, *Leonard M. Burger*, 51 ECAB 369 (2000).

<sup>7</sup> 5 U.S.C. § 8123(a).

<sup>8</sup> *L.S.*, Docket No. 12-139 (issued June 6, 2012); *see also Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

<sup>9</sup> *Id.*

that appellant had no residuals from the accepted employment injury. He provided medical rationale for his opinion by explaining that there were no objective medical findings that indicated that appellant's current disability was related to his work injury and that 15 months was more than enough time to recover from cervical as well as lumbar strains. Moreover, Dr. Paul explained that, based on the mechanism of injury and lack of objective finding, it was difficult to conclude that appellant sustained more than the accepted strains. The Board has carefully reviewed the opinion of Dr. Paul, the impartial medical examiner and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Accordingly, OWCP properly terminated appellant's benefits.

### **LEGAL PRECEDENT -- ISSUE 2**

As OWCP met its burden of proof to terminate appellant's compensation benefits, the burden shifted to appellant to establish that he had any remaining residuals causally related to his accepted injury.<sup>10</sup>

### **ANALYSIS -- ISSUE 2**

After OWCP's decision terminating appellant's benefits, he submitted additional medical evidence with his reconsideration request, which he felt established that he had residuals from the May 19, 2006 work injury. Dr. Bovell continued to note appellant's complaints of discomfort and indicated that he was still in treatment for his accepted work injuries. The Board has found that subsequent reports from a physician who was on one side of a medical conflict that had already been resolved would generally be insufficient to overcome the weight accorded the impartial medical examiner's report and/or insufficient to create a new medical conflict.<sup>11</sup> Thus, the Board finds that Dr. Bovell's subsequent reports are insufficient to overcome the special weight of the medical evidence as provided by Dr. Paul.

The report of Dr. Levi, a chiropractor, is of no probative medical value. Under FECA, a chiropractor is a physician to the extent that the reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.<sup>12</sup> There is no indication from Dr. Levi's report that she diagnosed a subluxation as demonstrated by x-ray to exist. Accordingly, she is not a physician as defined under FECA and her report does not constitute competent medical evidence.

The Board further finds the opinions of Dr. Cabalar to be of limited probative value. Dr. Cabalar noted that appellant's cervical and lumbar strain symptoms got worse and that he evinced degenerative changes in his cervical spine, shoulders, hips, lumbar spine and both knees. She opined that his current symptoms were triggered by his employment history. However, Dr. Cabalar never discusses appellant's prior history of injury and does not explain why she

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<sup>10</sup> *B.A.*, Docket No. 11-1928 (issued June 4, 2012); *see also Joseph A. Brown, Jr.*, 55 ECAB 542 (2004); *Manuel Gill*, 52 ECAB 282 (2001).

<sup>11</sup> *J.T.*, Docket No. 11-1252 (issued April 16, 2012).

<sup>12</sup> 20 C.F.R. § 10.311(a); *J.F.*, Docket No. 11-2145 (issued June 12, 2012).

believed that his current symptoms were related to the employment injury and not his multiple prior injuries.

Accordingly, the medical evidence submitted by appellant on reconsideration was insufficient to outweigh the special weight given the report of the impartial medical examiner, Dr. Paul. Therefore, appellant has failed to meet his burden of proof.

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 wage-loss compensation and medical benefits as of September 16, 2009. The Board further finds that appellant did not establish that he had any continuing employment-related residuals or disability after September 16, 2009.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 20, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 10, 2012  
Washington, DC

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

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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