

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

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<b>P.A., Appellant</b>	)	
	)	
<b>and</b>	)	
	)	<b>Docket No. 12-959</b>
	)	<b>Issued: September 24, 2012</b>
<b>DEPARTMENT OF DEFENSE, EDUCATION</b>	)	
<b>ACTIVITY, Fort Buchanan, Puerto Rico,</b>	)	
<b>Employer</b>	)	
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*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
RICHARD J. DASCHBACH, Chief Judge  
PATRICIA HOWARD FITZGERALD, Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On March 26, 2012 appellant filed a timely appeal from a March 12, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 met its burden of proof to terminate compensation for wage-loss and medical benefits effective August 18, 2010.

**FACTUAL HISTORY**

On November 3, 2008 appellant, then a 60-year-old education technician, completed a traumatic injury claim (Form CA-1) alleging that on that date he sustained injuries when he

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

slipped and fell on his buttocks while trying to get a student off playground equipment. The reverse of the claim form indicated that he stopped working on November 5, 2008. In an April 8, 2009 statement, appellant indicated that in May 2007 he had a fall that caused a fracture of his T11 vertebra. He stated that he had returned to work after the May 2007 injury and continued to use pain medication. Appellant submitted an April 6, 2009 report from Dr. Oscar Baez, a neurologist, stating that the November 2008 fall had “deteriorated” the previous condition and caused debilitating pain in the lumbar area, which was not the area primarily affected by the May 2007 fall.

On May 11, 2009 OWCP accepted the claim for lumbago and aggravation of sciatica. Appellant began receiving compensation for wage loss as of January 26, 2009.

By letter dated July 14, 2009, OWCP advised appellant that he was being referred for a second opinion examination by Dr. Fernando Rojas, a Board-certified orthopedic surgeon. In a report dated July 31, 2009, Dr. Rojas provided a history and reviewed medical evidence. He provided results on examination and diagnosed a lumbar sprain with mild aggravation, noting that appellant had preexisting fractures of the T11 and L1 vertebrae. Dr. Rojas opined that the aggravation of the previous lumbar injury was minor and should have resolved, and that appellant currently had a normal examination of the lumbar spine. He further opined that appellant did not have a current disability causally related to the November 3, 2008 employment injury, and his only recommendation would be physical therapy and/or oral medications, with a back strengthening program.

In a report dated August 3, 2009, Dr. Baez stated that appellant had been unable to work since January 26, 2009 due to the trauma to the back. He stated that appellant had undergone physical therapy and chiropractic treatment but continued to have back pain. Dr. Baez stated that he believed appellant had a permanent disability.

By letter dated October 23, 2009, OWCP requested an additional report from Dr. Rojas. It noted that while he indicated that appellant had no disability, he also referred to the need for physical therapy and strengthening. In a report dated January 15, 2010, Dr. Rojas stated that while appellant may have painful episodes that could be treated by medications or strengthening, appellant did not need any further specialized care for the accepted conditions. He stated that appellant had reached maximum medical improvement.

In a letter dated July 14, 2010, OWCP notified appellant that it proposed to terminate compensation for wage-loss and medical benefits. It found the weight of the evidence was represented by Dr. Rojas. Appellant was advised that he had 30 days to submit relevant evidence.

By decision dated August 18, 2010, OWCP terminated compensation for wage-loss and medical benefits.

On September 14, 2010 appellant requested an oral hearing before an OWCP hearing representative. A telephonic hearing was held on March 28, 2011. Appellant submitted an April 21, 2010 report from Dr. Luis Sanchez Longo, a neurologist, who provided a history that appellant had been involved in two falls. Dr. Longo did not specifically discuss the November 3,

2008 incident. He provided results on examination and the diagnoses included degenerative changes in the cervical and lumbar spine, depression and “many pains that limit him quite a bit.”

By decision dated May 23, 2011, OWCP’s hearing representative affirmed the termination of compensation. The hearing representative found the weight of the evidence was represented by Dr. Rojas.

On June 7, 2011 appellant requested reconsideration of his claim. He submitted a May 30, 2011 report from Dr. Angelica Cano, a pediatrician,<sup>2</sup> who stated that appellant came to her house in May 2007 after a fall, and he was driven to the hospital. According to Dr. Cano, on November 3, 2008 appellant had “another accident at work”<sup>3</sup> Appellant’s back got worse. Dr. Cano stated that he had been living in her house since May 2007, and stated that a February 21, 2011 MRI scan showed multilevel degenerative changes of the spine.

By decision dated November 23, 2011, OWCP reviewed the case on its merits and denied modification. Appellant again requested reconsideration on December 13, 2011. He submitted a December 5, 2011 report from Dr. Cano, who stated that after the “second fall” appellant had debilitating back pain. Dr. Cano stated that results of diagnostic tests radiologist “explain well enough [appellant’s] condition and the delicate situation in his back condition.” She stated the second fall worsened what was an already delicate and serious condition resulting in total disability, “[a]nd this condition still persists to this day.” Dr. Cano concluded that appellant’s present back condition was not improving and is endangering appellant’s overall health.

By decision dated March 12, 2012, OWCP again reviewed the merits of the claim and denied modification.

### **LEGAL PRECEDENT**

Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, OWCP may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.<sup>4</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. 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>5</sup>

To be of probative value, a medical report must provide an opinion on the issue presented that is supported by medical rationale. The opinion of the physician must be based on a complete factual and medical background, must be of reasonable medical certainty and

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<sup>2</sup> The physician’s name on the report is also referred to as Angelica Cano Montoya.

<sup>3</sup> Dr. Cano described the May 2007 incident as occurring at the military post store at the employing establishment. There is no indication that appellant filed a claim under FECA with respect to the May 2007 incident.

<sup>4</sup> *Elaine Sneed*, 56 ECAB 373 (2005); *Patricia A. Keller*, 45 ECAB 278 (1993); 20 C.F.R. § 10.503.

<sup>5</sup> *Furman G. Peake*, 41 ECAB 361 (1990).

supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>6</sup>

### ANALYSIS

In the present case, OWCP terminated compensation for wage-loss and medical benefits effective August 18, 2010, based on the reports of Dr. Rojas, the second opinion physician, who did provide a detailed medical report with a history of injury, review of medical records and results on examination. Dr. Rojas found in his July 31, 2009 report that appellant no longer had any residuals of the November 3, 2008 employment injury. He indicated that appellant had a normal physical examination and no employment-related disability. In a January 15, 2010 report, Dr. Rojas explained that appellant did not have any continuing need for treatment for an employment-related condition.

The medical evidence submitted by appellant does not contain a report of similar probative value to the issue presented. In his August 3, 2009 report, Dr. Baez does not provide a complete history and notes only that appellant continued to have back pain. He does not provide a rationalized medical opinion with respect to a continuing condition or disability causally related to the November 3, 2008 employment injury. Dr. Longo also did not provide a complete factual and medical history, as he failed to specifically discuss the November 3, 2008 employment incident. He did not provide a rationalized medical opinion with respect to a continuing employment-related disability or condition.

Appellant also submitted reports from Dr. Cano. In this regard, the Board notes that Dr. Cano is a pediatrician who did not appear to be an attending physician that had examined appellant. The history of the November 3, 2008 incident is very briefly described as a second fall, without further discussion. The reports do not provide a complete factual and medical history. There are no results on examination or other detail. Moreover, there is no rationalized medical opinion with respect to a continuing employment-related condition. Dr. Cano states that appellant continued to have pain, without providing medical rationale to explain why appellant's condition or disability as of August 18, 2010 was causally related to the November 3, 2008 injuries.

The Board accordingly finds that the weight of the medical evidence in this case was represented by Dr. Rojas, who provided a rationalized medical opinion that appellant did not have a continuing employment-related disability or condition. OWCP therefore met its burden of proof to terminate compensation for wage-loss and medical benefits as of August 18, 2010.

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.

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<sup>6</sup> *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

**CONCLUSION**

The Board finds that OWCP met its burden of proof to terminate compensation for wage-loss and medical benefits as of August 18, 2010.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated March 12, 2012 and November 23, 2011 are affirmed.

Issued: September 24, 2012  
Washington, DC

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

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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