

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

M.R., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Kansas City, MO, Employer**

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**Docket No. 12-1146
Issued: September 18, 2012**

Appearances:

*Melford V. McCormick, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On April 30, 2012 appellant, through counsel, filed a timely appeal of the April 19, 2012 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.

ISSUE

The issue is whether OWCP properly terminated appellant's compensation and medical benefits effective April 19, 2012 relative to her accepted cervical condition.

FACTUAL HISTORY

This is the second time this case has been before the Board on appeal. By decision dated July 23, 2012, the Board affirmed OWCP's September 6, 2011 decision denying appellant's

¹ 5 U.S.C. § 8101 *et seq.*

request to expand her claim to include a right shoulder condition.² The findings of facts and conclusions of law are incorporated herein by reference.

OWCP accepted appellant's June 7, 2004 traumatic injury claim for subluxation of the cervical spine. On March 23, 2006 Dr. Arthur Turner, a chiropractor, released appellant to return to her regular duties with no restrictions. Appellant returned to work full time on May 5, 2006. On December 5, 2008 she filed a notice of recurrence, which was denied by decisions dated May 4 and December 1, 2009.

On November 17, 2011 OWCP referred appellant to Dr. Edward J. Prostic, a Board-certified orthopedic surgeon, for a second opinion examination and an opinion as to whether her accepted cervical spine subluxation had resolved. In a December 2, 2011 report, Dr. Prostic provided a history of injury and treatment and examination findings. Cervical spine alignment was satisfactory, with no tenderness. Range of motion was as follows: forward flexion -- 40 degrees; extension -- 30 degrees; rotation -- 40 degrees to the right and 30 degrees to the left; and tilt -- 30 degrees to the right and 15 degrees to the left. Nerve root irritability signs were negative. No periscapular tenderness or spasm was noted. In response to questions posed by OWCP regarding his ability to determine whether the current subluxations, if any, were still related to the June 7, 2004 accident, Dr. Prostic stated: "It is unlikely that any of the disc bulges or the spinal stenosis was caused by the June 7, 2004 accident but any of them could have been aggravated by that accident." He also stated that it was unlikely that the radiologic abnormalities would be different and that appellant had multilevel cervical spinal degenerative changes that could easily have been permanently aggravated by the 2004 accident.

In response to OWCP's question as to whether the accepted cervical spine subluxations resolved, Dr. Prostic stated: "The patient continues to have symptomatic cervical spine degenerative disc disease. As yet, she does not have signs of cervical spinal stenosis and does not currently have any evidence of cervical radiculopathy."

In a letter dated December 19, 2011, OWCP requested additional information from Dr. Prostic, including objective findings with rationale supporting his opinion that the disc bulges, cervical stenosis and multiple level degenerative changes could have been aggravated by the accepted June 7, 2004 accident and that the aggravation could easily be permanent. Dr. Prostic was also asked to provide a rationalized opinion as to whether the medical record established that appellant continued to suffer residuals from her accepted cervical injury, as opposed to new work factors beginning in October 2008.

In a supplemental report dated January 13, 2012, Dr. Prostic stated:

"There are no truly objective findings that indicate that the patient's cervical spine problem was aggravated by the June 7, 2004 accident. The patient has no radiologic abnormalities that were undoubtedly caused by this accident rather than being preexisting. Her physical findings of restricted motion of the cervical spine likewise could largely be preexisting."

² Docket No. 11-2084 (issued July 23, 2012).

Dr. Prostic also indicated that there was no objective evidence that a new injury occurred subsequent to appellant's job change in October 2008.

On March 5, 2012 OWCP proposed to terminate appellant's compensation and medical benefits. It found that Dr. Prostic's report represented the weight of the medical evidence and established that she no longer had any disability or residuals due to her accepted work-related condition.

By decision dated April 19, 2012, OWCP finalized its proposal to terminate appellant's compensation and medical benefits on the grounds that her accepted condition had resolved.³

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.⁴ Having determined that an employee has a disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.⁵ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.⁶ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition which requires further medical treatment.⁷

ANALYSIS

OWCP accepted appellant's June 7, 2004 traumatic injury claim for subluxation of the cervical spine. Based on Dr. Prostic's second opinion reports, OWCP terminated her compensation and medical benefits on the grounds that the accepted condition had resolved. As noted, it is OWCP's burden to demonstrate the absence of employment-related disability or residuals for the period following termination or modification of benefits.⁸ The Board finds that Dr. Prostic's reports are insufficient to meet OWCP's burden of proof.

In his December 2, 2011 report, Dr. Prostic indicated that it was unlikely, but possible, that any of the disc bulges or the spinal stenosis was caused by the June 7, 2004 accident and that appellant's multilevel cervical spinal degenerative changes could easily have been permanently aggravated by the accepted event. He stated that she continued to have symptomatic cervical

³ The Board notes that appellant filed a request for an oral hearing on March 29, 2012 on the issue of the proposed termination. In the April 19, 2012 final decision, the claims examiner informed her that there were no appeal rights associated with the proposed termination because it was not a final decision.

⁴ *Curtis Hall*, 45 ECAB 316 (1994).

⁵ *Jason C. Armstrong*, 40 ECAB 907 (1989).

⁶ *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

⁷ *Calvin S. Mays*, 39 ECAB 993 (1988).

⁸ *Id.*

spine degenerative disc disease, without signs of cervical spinal stenosis or cervical radiculopathy. Although specifically asked to address the status of appellant's accepted cervical spine subluxations, Dr. Prostic's statements provide no indication that her cervical spine subluxation had resolved. Rather, his speculative report suggests that the condition continued and was potentially permanent.

Dr. Prostic's brief supplemental report is of diminished probative value on several counts. His opinion that appellant's cervical spine condition could have preexisted the June 7, 2004 accident is speculative in nature. Moreover, it fails to address the relevant issue. Dr. Prostic did not provide an unequivocal opinion that appellant was no longer disabled due to her accepted condition or that her cervical condition had resolved. Rather, his report suggests that she continued to experience residuals related to her accepted condition. OWCP did not attempt to clarify Dr. Prostic's report and the record does not contain any other evidence establishing that the accepted conditions had resolved.

The Board finds that OWCP improperly terminated compensation and medical benefits for the accepted conditions of cervical spine subluxation. In order to terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition which requires further medical treatment.⁹ Dr. Prostic's opinion is insufficient to show that appellant no longer has residuals of her accepted condition, but instead suggests that she requires further medical treatment. The record does not contain a rationalized medical opinion establishing that the accepted condition had resolved as of April 19, 2012. OWCP thus improperly terminated authorization for medical treatment for those accepted conditions.

CONCLUSION

The Board finds that OWCP improperly terminated appellant's compensation and medical benefits relative to the accepted cervical condition.

⁹ *Pamela K. Guesford*, 53 ECAB 727 (2002).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' April 19, 2012 decision is reversed.

Issued: September 18, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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