

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

L.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Margate, NJ, Employer**

)
)
)
)
)
)
)
)
)
)

**Docket No. 12-1946
Issued: April 16, 2013**

Appearances:
Thomas R. Uliase, Esq., for the appellant
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 September 24, 2012 appellant, through counsel, filed a timely appeal from a July 13, 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.²

ISSUE

The issue is whether OWCP properly terminated appellant's medical benefits on the grounds that he had no need for further medical treatment due to his accepted lower back sprain.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the July 13, 2012 decision, OWCP received additional evidence. However, the Board may only review evidence that was in the record at the time OWCP issued its final decision. *See* 20 C.F.R. § 501.2(c)(1); *M.B.*, Docket No. 09-176 (issued September 23, 2009); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

On appeal, counsel contends that there is an unresolved conflict in the medical opinion evidence.

FACTUAL HISTORY

On July 29, 2008 appellant, then a 44-year-old city carrier, filed a traumatic injury claim alleging that on that day he sprained his lower back when he slipped on a curb and heard a pop in his back. OWCP accepted the claim for lower back sprain. Appellant stopped work on July 29, 2008 and returned to a part-time modified job on August 2, 2010.

On October 19, 2010 appellant was referred for a second opinion evaluation with Dr. Lawrence I. Barr, an osteopath, for a functional capacity examination. In a November 8, 2010 report, Dr. Barr, based upon a review of the statement of accepted facts, employment injury history, magnetic resonance imaging (MRI) scans and physical examination, diagnosed chronic low back pain, morbid obesity and lumbar sprain with degenerative disc disease. He noted that it appeared appellant had chronic low back pain, which predated the employment injury and that the low back sprain had resolved. Dr. Barr opined that no further medical treatment for the low back sprain was necessary as the condition had resolved. He stated that he found no clinical signs supporting a diagnosis of radiculopathy or neuropathy.

In response to OWCP's letter, appellant submitted a January 3, 2011 progress note which noted physical findings and indicated that he continued to have lower back pain with spasms.³

In a January 6, 2011 supplemental report, Dr. Barr opined that appellant was capable of returning to his date-of-injury job as his back sprain had stabilized. He noted that appellant's primary complaint was lumbar degenerative disc disease.

On February 22, 2011 OWCP issued a notice proposing to terminate appellant's medical benefits.⁴ It found that the reports of Dr. Barr established that he had no residuals or disability due to the accepted lower back strain.

By decision dated March 25, 2011, OWCP finalized the termination of appellant's medical benefits effective that day.

In an April 5, 2011 reevaluation progress note, initialed by Dr. Arthur G. Nahas, an osteopath and appellant's treating physician indicted that appellant was diagnosed with acute/chronic lumbosacral pain, morbid obesity and radicular bilateral leg pain. Dr. Nahas found that Dr. Barr's report was prejudiced and inaccurate about appellant's condition.

On April 20, 2011 appellant requested review of the written record of the March 25, 2011 decision terminating his medical benefits.

³ The report contains initials, but no signature.

⁴ On February 17, 2011 OWCP had issued a decision terminating appellant's wage-loss compensation effective that day also on the basis of Dr. Barr's report.

On May 23, 2011 counsel also requested reconsideration of the March 25, 2011 decision terminating his medical benefits. A telephonic hearing was held on July 15, 2011.

OWCP received a May 13, 2011 report from Dr. Nahas and a May 23, 2011 request to expand his claim to include lumbar radiculopathy.

On May 13, 2011 Dr. Nahas opined that appellant was totally disabled and sustained a permanent low back injury. He related that appellant was last seen on April 5, 2011 for low back pain and muscle spasms and bilateral radicular leg pain. Dr. Nahas opined that based on a nerve conduction study appellant has moderate left L5-S1 radiculopathy and mild right L5 radiculopathy. In concluding, he opined that appellant was disabled from performing his duties as a mail carrier due to back injury.

On July 18 and 21, 2011 OWCP received additional reports from Dr. Nahas. In a May 31, 2011 report, Dr. Nahas attributed appellant's disability commencing October 15, 2010 to his modified job duties which exacerbated his symptoms and aggravated his back condition. He further opined that appellant's repetitive job duties exacerbated his lower back and leg pain.

Dr. Nahas, in a July 8, 2011 report, opined that appellant continued to have residuals due to the accepted July 29, 2008 employment injury. With respect to the cause of appellant's disability on and after October 14, 2010, he concluded that the disability was due to a new claim based on the progression of appellant's symptomatology and aggravating work factors. In concluding, Dr. Nahas opined that appellant's total disability beginning October 14, 2010 and continuing was due to a new employment injury to appellant's back.

By decision dated August 25, 2011, OWCP's hearing representative set aside the March 25, 2011 decision terminating appellant's medical benefits and remanded the case for further medical development on the issue of whether his L5-S1 radiculopathy was causally related to the accepted July 29, 2008 employment injury.

In a December 2, 2011 supplemental report, Dr. Barr noted that he reviewed the additional notes and objective evidence provided by OWCP. A review of the nerve conduction study revealed mild right L5 and moderate L5-S1 radiculopathy. However, Dr. Barr related that as there was no needle component to the test, this nerve conduction velocity study was inadequate to support a diagnosis of radiculopathy. In concluding, he noted that, while he found radicular complaints in his initial examination, he found no clinical radiculopathy signs during his January 8, 2010 examination.

By decision dated December 13, 2011, OWCP terminated appellant's medical benefits effective that day. It found that the opinion of Dr. Barr established that appellant no longer had any residuals due to his accepted employment condition.

In correspondence dated December 19, 2011, counsel requested an oral hearing before an OWCP hearing representative.

By decision dated March 15, 2012, OWCP's hearing representative found that the case was not in posture for a decision. It vacated the December 13, 2011 decision and remanded the case to OWCP for further development of the medical evidence. OWCP was instructed to refer

appellant back to Dr. Barr to assess whether a lumbar radiculopathy condition is present and whether it is causally related to the accepted July 29, 2008 employment injury. It instructed that medical benefits for the accepted lumbar strain be reinstated.

In a June 4, 2012 report, Dr. Barr performed an updated examination, provided his findings and conclusions and diagnoses of low back sprain, lumbar degenerative disc disease and morbid obesity. A physical examination revealed positive straight leg raising for back pain at 40 degrees, a negative Patrick's sign, nontender sacroiliac joints and no true sacrosciatic notch tenderness. Dr. Barr reported that a January 30, 2009 MRI scan showed mild L5-S1 degenerative disc disease and small right lateral recess spur. He also reviewed a May 24, 2012 electromyography test which showed sensory neuropathy. Dr. Barr opined that appellant had plateaued medically and no further medical treatment was necessary. In response to OWCP's questions, he stated that he found no clinical signs of radiculopathy as appellant had good strength, sensation and reflexes and no atrophy. Dr. Barr stated that appellant is disabled, but that any disability is due to his morbid obesity and preexisting degenerative disc disease. He noted that the physical examination revealed that appellant had good reflexes, strength and sensation and no atrophy. Dr. Barr concluded that appellant sustained a low back injury with an exacerbation of an underlying lumbar degenerative disc disease due to the accepted employment injury. A review of an MRI scan revealed L5-S1 degenerative disc disease and right lateral recess spur. Dr. Barr opined that appellant no longer required any medical care or treatment for the accepted lumbar spine low back sprain. Lastly, he attributed appellant's current disability to his preexisting degenerative disc disease and morbid obesity.

On June 22, 2012 Dr. Barr in response to questions posed by OWCP, related that appellant had no clinical signs of radiculopathy based on no atrophy, good strength, sensation and reflexes. He opined that appellant required no further medical treatment of his low back sprain. Dr. Barr stated that, while the objective testing revealed sensory neuropathy, this condition was attributed to appellant's diabetic condition.

By decision dated July 13, 2012, OWCP terminated appellant's medical benefits based on Dr. Barr's June 4, 2012 report. It also found the evidence insufficient to establish a diagnosis of lumbar radiculopathy as causally related to the accepted July 29, 2008 employment injury.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.⁵ The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁶ To terminate

⁵ *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁶ *A.P.*, Docket No. 08-1822 (issued August 5, 2009); *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.⁷

ANALYSIS

OWCP accepted that on July 29, 2008 appellant sustained a low back sprain in the performance of duty. On December 13, 2011 it terminated his medical benefits as it found the medical evidence established that he no longer required further medical treatment for his accepted employment injury. By decision dated March 15, 2012, OWCP's hearing representative remanded the case to OWCP to request that Dr. Barr determine whether lumbar radiculopathy was present and if yes, whether there was a causal relationship with the July 29, 2008 employment injury. On July 13, 2012 OWCP terminated medical benefits based on Dr. Barr's updated finding that lumbar radiculopathy was not present and appellant no longer required any medical treatment. The issue on appeal is whether OWCP met its burden to terminate appellant's medical benefits. The Board finds that it properly relied upon the thorough, well-rationalized opinion of Dr. Barr, who served as an OWCP referral physician. Dr. Barr's reports established that appellant required no further medical treatment for his accepted employment conditions.

Dr. Barr provided an extensive review of appellant's medical history, reported examination findings in his reports. In reports dated November 8, 2010 and June 4, 2012, he diagnosed conditions including low back pain sprain, morbid obesity, lumbar sprain and lumbar degenerative disc disease. Dr. Barr noted an unremarkable examination of appellant's lumbar spine with full range of motion and only minimal tenderness to light touch and no neurological findings. In a June 22, 2012 addendum, he reported no atrophy, good strength, sensation and reflexes and no evidence of radiculopathy on physical examination. Dr. Barr attributed appellant's sensory neuropathy to appellant diabetes. He indicated that any disability was due to appellant's morbid obesity and preexisting degenerative disc disease.

The Board finds that Dr. Barr's reports represent the weight of the medical evidence and that OWCP properly relied on his reports in terminating appellant's medical benefits. Dr. Barr's opinion is based on proper factual and medical history as he reviewed a statement of accepted facts and appellant's prior medical treatment and test results. He also related his comprehensive examination findings in support of his opinion that the accepted work-related condition had resolved. Dr. Barr indicated that appellant did not have residuals from the condition of lower back sprain and that his current condition was due to his preexisting degenerative disc disease and morbid obesity. There is no contemporaneous medical evidence of equal weight supporting appellant's claim for medical residuals. Thus, OWCP met its burden of proof to terminate his medical benefits.

Appellant submitted reports and progress notes from Dr. Nahas, who continued to treat appellant for acute lumbar sprain. Dr. Nahas diagnosed lumbosacral pain, morbid obesity and radicular bilateral leg pain in April 5, 2011 progress notes. In reports dated May 13 and 23, 2011, he requested expansion of appellant's claim to include the diagnosis of lumbar

⁷ *B.K.*, Docket No. 08-2002 (issued June 16, 2009); *Kathryn E. Demarsh*, *supra* note 6; *James F. Weikel*, 54 ECAB 660 (2003).

radiculopathy. On May 31, 2011 Dr. Nahas attributed appellant's lower back and leg pain to exacerbation from appellant's repetitive job duties. In a July 8, 2011 report, he opined that appellant continued to require medical treatment for injuries sustained as a result of his accepted July 29, 2008 employment injury. However, none of Dr. Nahas' reports specifically provide any medical reasoning to explain how any continuing condition was causally related to the July 29, 2008 employment injury, accepted for a low back sprain and, therefore, are of limited probative value.⁸ Additionally, the Board notes that OWCP has not accepted the condition of lumbar radiculopathy as due to the July 29, 2008 employment injury.⁹ Dr. Nahas provided insufficient rationale addressing how the work incident caused lumbar radiculopathy particularly when he opined that appellant's work duties aggravated his symptoms and back condition. The Board has held that opinions unsupported by rationale are of diminished probative value.¹⁰ Thus, Dr. Nahas' opinion is insufficient to create a conflict in the medical opinion evidence with the opinion of Dr. Barr.

The Board finds that OWCP properly relied upon Dr. Barr's reports to conclude that appellant had no continuing medical residuals of his accepted employment injury. Therefore, OWCP met its burden to terminate appellant's medical benefits.

On appeal, counsel contends there is an unresolved conflict in the medical opinion evidence between Dr. Barr and Dr. Nahas. As explained above, the Board finds that the weight of the evidence rested with the opinion of Dr. Barr and that the opinion of Dr. Nahas was insufficiently rationalized to create a conflict.

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 has met its burden of proof in terminating appellant's medical benefits.

⁸ *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

⁹ *Charles W. Downey*, 54 ECAB 421 (2003); *Alice J. Tysinger*, 51 ECAB 638 (2000) (for conditions not accepted by OWCP as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not OWCP's burden to disprove such relationship).

¹⁰ *T.M.*, Docket No. 08-975 (issued February 6, 2009); *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 13, 2012 is affirmed.

Issued: April 16, 2013
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