

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

A.P., Appellant	)	
	)	
and	)	<b>Docket No. 13-116</b>
	)	<b>Issued: April 3, 2013</b>
<b>DEPARTMENT OF TRANSPORTATION,</b>	)	
<b>FEDERAL AVIATION ADMINISTRATION,</b>	)	
<b>Renton, WA, Employer</b>	)	
	)	

<i>Appearances:</i>	<i>Case Submitted on the Record</i>
<i>Alan J. Shapiro, Esq.,</i> for the appellant	
<i>Office of Solicitor,</i> for the Director	

**DECISION AND ORDER**

Before:  
RICHARD J. DASCHBACH, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
PATRICIA HOWARD FITZGERALD, Judge

**JURISDICTION**

On October 19, 2012 appellant, through his attorney, filed a timely appeal from a September 26, 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 the case.

**ISSUE**

The issue is whether appellant established that he had any continuing disability or residuals relating to his accepted conditions after October 6, 2010.

**FACTUAL HISTORY**

This case has previously been before the Board. By decision dated March 2, 2012, the Board affirmed OWCP's decision dated April 25, 2011 which terminated compensation benefits,

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

effective October 6, 2010, based on the reports of Dr. Aubrey A. Swartz, a Board-certified orthopedic surgeon and an OWCP referral physician.<sup>2</sup> The facts and circumstances of the case up to that point are set forth in the Board's prior decision and incorporated herein by reference.<sup>3</sup>

Previous medical evidence which is relevant to the current appeal includes Dr. Swartz's June 22, 2010 report which noted an unremarkable examination of appellant's lumbar and cervical spine with only minimal tenderness to light touch and no neurological findings. With regard to the cervical spine, there was no evidence of record to reflect significant injury or residuals to either the neck or low back. Dr. Swartz found that appellant had no residuals of the March 24, 2009 injury. While there were hypesthesias over the medial and lateral borders and plantar surfaces of both feet, there was no indication that these findings were related to the work injury or to any straining injuries to the cervical or lumbar spine. A July 20, 2010 electromyogram (EMG) revealed mild chronic bilateral C5-C6 radiculopathy with mild right ulnar nerve entrapment at the wrist. In a July 28, 2010 supplemental report, Dr. Swartz advised that appellant sustained a cervical strain as a result of the motor vehicle accident on March 4, 2009 and had preexisting degenerative disc disease in the cervical spine. He noted that the EMG found evidence of chronic mild bilateral L5-S1 radiculopathy which was not active or evident clinically. Dr. Swartz noted that appellant sustained a self-limiting soft tissue strain of the cervical spine related to his work injury which resolved and his current symptoms were attributable to his preexisting degenerative disease. Appellant had reached maximum medical improvement on June 22, 2010, was working his regular job, full time as an aircraft mechanic and required no further medical treatment referable to his work injury.

Appellant was treated by Dr. Jeffrey Brown, an osteopath, from March 27, 2009 to January 27, 2010, who diagnosed cervicgia, backache, headache, paresthesia, musculoneuralgia and numbness in both feet. Dr. Brown noted that appellant was able to resume regular duty on March 27, 2009. Other reports from Dr. Brown dated July 2 to August 6, 2010 noted diagnoses and appellant's treatment for back discomfort and tingling in his feet. Similarly, in a September 7, 2010 report, Dr. Brown noted appellant's complaints of numbness and tingling in the lower extremity which developed after his work accident.

On July 2, 2012 appellant requested reconsideration. He submitted a May 22, 2012 report from Dr. Brown, who noted that appellant was involved in a motor vehicle accident on March 24, 2009 and presented with neck and back pain and later numbness and tingling in the feet. Dr. Brown noted that appellant's accident caused trauma to the lumbar region and the body responded by creating inflammation which resulted in pressure on the nerves leading to symptoms of neuropathy. He noted that the sensory test revealed significant involvement in the L5-S1 nerve distribution which began in the spine and moved down the lateral leg to the feet and S1 began in the back of the thigh and moved down the lateral leg to the lateral foot with decreased reflexes. Dr. Brown noted that Dr. Swartz found decreased reflexes. He opined that appellant was asymptomatic prior to the accident and after the accident remained symptomatic.

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<sup>2</sup> On March 24, 2009 appellant, an aviation safety inspector, was injured when his government automobile was struck by another vehicle while in the performance of duty. OWCP accepted his claim for a neck sprain. Appellant stopped work on March 25, 2009 and returned on March 27, 2009.

<sup>3</sup> Docket No. 11-1545 (issued March 2, 2012).

In a decision dated September 26, 2012, OWCP denied modification of the prior decision.

### **LEGAL PRECEDENT**

Once OWCP meets its burden of proof to terminate appellant's compensation benefits, the burden shifted to appellant to establish that he had continuing disability causally related to his accepted employment injury.<sup>4</sup> To establish causal relationship between the claimed disability and the employment injury, appellant must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship.<sup>5</sup>

### **ANALYSIS**

The Board finds that appellant has not established that he has any continuing residuals of his work-related neck sprain, on or after October 6, 2010.

After the termination of benefits on October 6, 2010, appellant submitted a May 22, 2012 report from Dr. Brown who noted a history of injury and advised that appellant presented with neck and back pain and later numbness and tingling in the feet. Dr. Brown noted that appellant's accident caused trauma to the lumbar region and the body responded by creating inflammation which resulted in pressure on the nerves leading to symptoms of neuropathy. He noted that the sensory test revealed significant involvement in the L5-S1 nerve distribution which radiated into the leg and feet. Dr. Brown opined that appellant was asymptomatic prior to the accident and after the accident remained symptomatic. However, his report fails to specifically provide any medical reasoning to explain how any continuing residual condition was causally related to the March 24, 2009 work injury, therefore, is of limited probative value.<sup>6</sup> While Dr. Brown asserted that the accident caused lumbar trauma that created inflammation that resulted in pressure on the nerves leading to neuropathy, he did not explain the process by which this would have resulted from the neck sprain. His basic reasoning for relating appellant's current paresthesia to the employment injury was that appellant had no paresthesia prior to the employment injury. The Board has held that an opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury is insufficient, without supporting rationale, to support a causal relationship.<sup>7</sup> For this reason, this evidence is not sufficient to meet appellant's burden of proof.

None of the reports submitted by appellant after the termination of benefits included a rationalized opinion sufficiently explaining the causal relationship between his current condition

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<sup>4</sup> See *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004); *Manuel Gill*, 52 ECAB 282 (2001).

<sup>5</sup> *Daniel F. O'Donnell, Jr.*, 54 ECAB 456 (2003).

<sup>6</sup> *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>7</sup> *Kimper Lee*, 45 ECAB 565 (1994). Furthermore, for conditions not accepted by OWCP as being employment related, the claimant bears the burden of proof to establish that the condition is causally related to the employment injury. See *Asaramo, id.*

and his accepted work-related conditions. Consequently, appellant did not establish that he had any employment-related condition or disability after October 6, 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.

**CONCLUSION**

The Board further finds that appellant failed to establish that he had any continuing disability after October 6, 2010.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated September 26, 2012 is affirmed.

Issued: April 3, 2013  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board