

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

J.S., Appellant

and

**GENERAL SERVICES ADMINISTRATION,
OFFICE OF FEDERAL SUPPLIES &
SERVICES, Duluth, GA, Employer**

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**Docket No. 13-995
Issued: August 2, 2013**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

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

JURISDICTION

On March 18, 2013 appellant filed a timely appeal from a February 21, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) terminating his compensation benefits. 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 benefits effective February 21, 2013 on the grounds that he had no further disability due to his May 24, 1983 employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board. In a decision dated December 17, 2010, the Board affirmed an October 27, 2009 decision denying appellant's request to reopen his case for further merit review under 5 U.S.C. § 8128(a).² The Board further affirmed in part and reversed in part a September 29, 2009 decision terminating his compensation and authorization for medical benefits effective March 15, 2009. The Board found that the opinion Dr. Harold H. Alexander, a Board-certified orthopedic surgeon and OWCP referral physician, was insufficient to establish that he had no further disability due to his low back strain with sciatica and L4-5 disc bulge. The Board further determined, however, that the opinion of Dr. Brian Teliho, a Board-certified psychiatrist and referral physician, established that appellant had no further disability or need for medical treatment due to his accepted PTSD. The facts and circumstances as set forth in the prior decision are hereby incorporated by reference.

Upon return of the case record, OWCP paid appellant compensation for total disability retroactive to March 15, 2009 and returned him to the periodic rolls. On March 6, 2012 it referred appellant to Dr. R. Michael Prudent, a Board-certified psychiatrist, for a second opinion examination.

On March 6, 2012 OWCP referred appellant to Dr. Alexander N. Doman, a Board-certified orthopedic surgeon, for a second opinion examination. In a report dated March 29, 2012, Dr. Doman discussed the history of injury and appellant's current complaints of low back pain with some radiation into the legs and neck pain radiating into his arms. On examination, he found a negative straight leg test, no atrophy and decreased range of motion. Dr. Doman noted that nerve conduction studies were normal and x-ray showed L5-S1 degenerative disc disease. He diagnosed lumbar degenerative disc disease due to age. Dr. Doman found that appellant had no objective findings showing that he had either continued disability or residuals of his work injury. He stated:

“[Appellant] is able to perform his regular job as a warehouse worker without restrictions with respect to his compensable injury, which has long ago resolved. [He] would need restrictions to a light-duty job as a result of his age-related degenerative condition of the lumbar spine and cervical spine. However, this age-related degenerative condition is entirely unrelated to the compensable injury.”

In a report dated April 10, 2012, Dr. Prudent noted that appellant complained of depression, disturbed sleep and reluctance to leave the home. He indicated that appellant complained of paranoia but found that based on his description of symptoms it was “in fact hypersensitivity and hypervigilance regarding social scrutiny.” Dr. Prudent diagnosed recurrent moderate major depressive episode and to rule out dysthymic disorder and schizoaffective disorder and a personality disorder not otherwise specified. He found no symptoms of PTSD and questioned whether a back injury was sufficiently beyond normal experience to result in such a diagnosis. Dr. Prudent noted, however, that it was not appropriate for him to reach such a

² Docket No. 10-878 (issued December 17, 2010). OWCP accepted that on May 24, 1983 appellant, then a 37-year-old warehouse worker, sustained low back strain with sciatica, a bulging disc at L4-5 and post-traumatic stress disorder (PTSD) in the performance of duty. It paid him compensation for total disability from 1986 onward.

determination. He advised that appellant was comfortable during the examination and noted that he was not currently receiving psychiatric treatment or taking any significant medication for a psychiatric condition. Dr. Prudent concluded, "I find no evidence of PTSD in this claimant related to his employment in 1983. He has some symptoms that are consistent with PTSD related to his Vietnam experience, but even they appear to be mild and no longer impacting his day-to-day function." Dr. Prudent found that appellant could return to his usual employment from a psychiatric standpoint.

On January 15, 2013 OWCP advised appellant of its proposed termination of his compensation and authorization for medical benefits. It found that the opinions of Dr. Doman and Dr. Prudent represented the weight of the evidence and established that he had no further employment-related disability or need for medical treatment.

In a January 25, 2013 response, appellant asserted that his 1983 injury caused numbness in his right arm, pain and arthritis. He maintained that he was unable to work due to his physical and emotional conditions.

By decision dated February 21, 2013, OWCP terminated appellant's entitlement to wage-loss compensation effective that date.³

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁴ OWCP's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵

ANALYSIS

On prior appeal, the Board reversed OWCP's termination of appellant's compensation for the accepted conditions of low back strain with sciatica and a bulging disc at L4-5 and affirmed OWCP's termination of his compensation and authorization for medical benefits for the accepted condition of PTSD.⁶ Notwithstanding the Board's affirmance of OWCP's finding that he had no residuals of the accepted employment-related PTSD, on March 6, 2012 OWCP again developed the issue by referring appellant to Dr. Prudent for a second opinion examination. On April 10, 2012 Dr. Prudent reviewed the history of injury and appellant's complaints of paranoia and

³ Even though OWCP issued a notice of proposed termination of both compensation and authorization for medical benefits, in its final decision it terminated only disability compensation.

⁴ *Elaine Sneed*, 56 ECAB 373 (2005); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

⁵ *Gewin C. Hawkins*, 52 ECAB 242 (2001).

⁶ In the absence of further review by OWCP on the issue addressed by the prior Board decision, the subject matter reviewed was *res judicata* and not subject to further consideration by the Board. *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004).

depression. He diagnosed recurrent moderate major depressive episode and a personality disorder not otherwise specified. Dr. Prudent advised that appellant had no work restrictions due to a psychiatric condition. He provided rationale for his opinion by explaining that appellant was not currently receiving psychiatric treatment or significant psychiatric medication and that he had no current symptoms of employment-related PTSD. The Board finds that Dr. Prudent's opinion is sufficiently rationalized to establish that appellant has no further disability due to his work-related PTSD.⁷ His reasoned opinion is based on a proper factual and medical history and thus represents the weight of the evidence.

On March 29, 2012 Dr. Doman evaluated appellant to determine whether he had any disability due to his accepted low back strain with sciatica and a bulging disc at L4-5. On examination, he found a negative straight leg test and no atrophy but some decreased range of motion. Dr. Doman noted that nerve conduction studies were normal and x-ray showed L5-S1 degenerative disc disease. He discussed appellant's complaints of both lumbar and neck pain with radiculopathy. Dr. Doman diagnosed lumbar degenerative disc disease due to age and asserted that he had no further objective evidence of his employment injury. He opined that appellant could return to his usual employment considering only his work injury. Dr. Doman advised that appellant did have restrictions due to age-related cervical and lumbar disc degeneration, which he found not related to the accepted employment injury. He based his opinion on the findings on examination and results of diagnostic studies. Dr. Doman provided a thorough review of the factual and medical background. Moreover, he provided detailed findings on examination and reached conclusions regarding appellant's condition which comported with his findings.⁸ As Dr. Doman's opinion is detailed, based on a proper medical history and supported by rationale, it represents the weight of the evidence and establishes that appellant has no further disability due to his accepted sciatica and L4-5 bulging discs.

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 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that OWCP properly terminated appellant's compensation benefits effective February 21, 2013 on the grounds that he had no further disability due to his May 24, 1983 employment injury.

⁷ See *E.J.*, 59 ECAB 695 (2008).

⁸ See *Pamela K. Guesford*, 53 ECAB 727 (2002).

ORDER

IT IS HEREBY ORDERED THAT the February 21, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 2, 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