

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

G.U., Appellant)	
)	
and)	Docket No. 12-1725
)	Issued: March 14, 2013
)	
U.S. POSTAL SERVICE, POST OFFICE,)	
Luquillo, PR, Employer)	
)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 15, 2012 appellant, through his attorney, filed a timely appeal from a July 17, 2012 merit decision of the Office of Workers' Compensation Programs terminating his wage-loss compensation.¹ Pursuant to the Federal Employees' Compensation Act² (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 issued a decision terminating appellant's compensation as he had no further employment-related disability.

¹ The record contains an April 11, 2012 decision terminating appellant's entitlement to medical benefits. Appellant has not appealed this decision and therefore it is not before the Board at this time. See 20 C.F.R. §§ 501.2(c) and 501.3(a).

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On June 15, 2010 appellant, then a 40-year-old city carrier, filed a traumatic injury claim alleging that he strained his lower back on that date lifting a parcel. He stopped work on June 14, 2010. OWCP accepted the claim for lumbar sprain.

On November 5, 2010 Dr. Enrique Rodriguez Olaverri, a neurologist, diagnosed lumbar radiculopathy, a degenerative disc, retrolisthesis at L4-5, a sprain of a lumbar muscle and tarsal tunnel syndrome.³ He determined that appellant could work with restrictions. In a November 5, 2010 duty status report, Dr. Olaverri diagnosed lumbar sprain, checked “yes” that the history of injury given by appellant corresponded to the history provided on the form and found that he could work part time with restrictions.

In a report dated January 10, 2011, Dr. Boris Rojas, an attending internist, described the history of injury as appellant experiencing back pain on June 14, 2010 while lifting a parcel. He returned to work but the employing establishment failed to adhere to his work restrictions. Dr. Rojas noted that appellant also experienced pain in his right shoulder and left knee, and that a right shoulder magnetic resonance imaging (MRI) scan study showed a superior glenoid labrum tear.⁴ He diagnosed a disc protrusion at L5-S1 with right radiculopathy, a right superior labrum tear, cervical myositis and status post left knee sprain. Dr. Rojas stated that, “The spinal and neurological injury that [appellant] suffers is causally related to the work accident on June 14, 2010. Conditions and/or factors of the employment as a letter carrier, particularly the physical requirements of the job, are also causally related to the permanency and/or aggravation of the injury suffered by [appellant] in that date.” He concluded that appellant’s ability to work was “substantially impaired due to the spinal and neurological injuries arising from the work injury he suffered on June 14, 2010.”

On October 13, 2011 OWCP referred appellant to Dr. Fernando Rojas, a Board-certified orthopedic surgeon, for a second opinion examination. It indicated that appellant was working full time with restrictions and requested that Dr. Rojas address whether he could return to his usual work duties.

In a report dated October 28, 2011, Dr. Fernando Rojas found that appellant’s lumbar sprain had resolved and that he would resume his usual employment. He determined that appellant had a right shoulder glenoid labrum tear unrelated to his lumbar condition.

On November 16, 2011 appellant filed a claim for compensation beginning September 30, 2010.

In a decision dated February 28, 2012, OWCP terminated appellant’s compensation effective February 28, 2012 on the grounds that he had no further disability due to his June 14, 2010 work injury. It found that Dr. Fernando Rojas’ opinion represented the weight of the evidence and established that he had no further employment-related disability.

³ In duty status report dated October 12, 2010, Dr. Ingrid M. Negron Valentin, an orthopedic surgeon, found that appellant had sprained his back lifting a parcel. She advised that he could work with restrictions.

⁴ An MRI scan study of the right shoulder dated November 16, 2010 revealed a glenoid labrum tear.

On February 28, 2012 OWCP advised appellant that it proposed to terminate authorization for medical treatment as the weight of the medical evidence established that he had no residuals of his lumbar sprain.

On March 6, 2012 appellant, through his attorney, requested a telephone hearing before an OWCP hearing representative.

In a decision dated April 11, 2012, OWCP terminated appellant's medical benefits effective that date. On April 17, 2012 appellant's attorney requested a telephone hearing.

At the hearing on the February 28, 2012 decision terminating compensation, appellant related that he returned to work after his injury but stopped due to pain. He also claimed a knee injury and worsening of a preexisting psychiatric condition.

By decision dated July 17, 2012, OWCP's hearing representative affirmed the February 28, 2012 decision. She found that appellant had not established disability for any claimed period or after the termination of his benefits on February 28, 2012 based on the opinion of Dr. Fernando Rojas. The hearing representative also found Dr. Boris Rojas' opinion insufficient to show disability from employment.

LEGAL PRECEDENT

The term disability as used in FECA⁵ means the incapacity because of an employment injury to earn the wages that the employee was receiving at the time of injury.⁶ Whether a particular injury caused an employee disability for employment is a medical issue which must be resolved by competent medical evidence.⁷

ANALYSIS

The Board finds that OWCP did not properly adjudicate the issue presented. OWCP accepted that appellant sustained lumbar sprain as a result of a June 14, 2010 employment injury. Appellant returned to work following his employment injury but stopped work and on November 16, 2011, filed a claim for compensation beginning September 3, 2010. He submitted medical evidence from Dr. Olaverri and Dr. Boris Rojas addressing his ability to work during this period. In a decision dated February 28, 2012, OWCP terminated his compensation effective that date after finding that the opinion of Dr. Fernando Rojas, a referral physician, established that he had no further disability due to his June 14, 2010 employment injury. On July 17, 2012 an OWCP hearing representative affirmed the February 28, 2012 decision.

As OWCP was not paying appellant wage-loss compensation, however, it improperly characterized the issue as a termination of wage-loss compensation. The issue was whether appellant met his burden of proof to establish that he was disabled beginning September 30, 2010

⁵ 5 U.S.C. § 8101 *et seq.*; 20 C.F.R. § 10.5(f).

⁶ *Paul E. Thams*, 56 ECAB 503 (2005).

⁷ *Id.*

due to his June 14, 2010 employment injury. OWCP regulations provide that compensation for wage loss due to disability is available for any period during which an employee's work-related medical condition prevents him or her from earning the wages earned before the work-related injury.⁸ OWCP must evaluate the evidence and determine if he has met his burden of proof to show that appellant was unable to work during the claimed period. It relied upon the opinion of Dr. Fernando Rojas to find that he had no further disability after February 28, 2012. In his October 28, 2011 report, however, Dr. Fernando Rojas did not address the issue of whether appellant was disabled from work beginning September 3, 2010. Instead, he found that appellant had no residuals of his lumbar sprain as of the date of examination. As OWCP failed to issue an appropriate decision adjudicating appellant's claim for compensation beginning September 3, 2010, the case will be remanded for this purpose.

CONCLUSION

The Board finds that the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the July 17, 2012 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: March 14, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

⁸ See *Judith A. Cardiddo*, 55 ECAB 348 (2004).