

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

E.R., Appellant	)	
	)	
and	)	<b>Docket No. 13-1074</b>
	)	<b>Issued: November 21, 2013</b>
DEPARTMENT OF AGRICULTURE,	)	
AGRICULTURAL MARKETING SERVICE,	)	
Raleigh, NC, Employer	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
PATRICIA HOWARD FITZGERALD, Judge  
ALEC J. KOROMILAS, Alternate Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On April 3, 2013 appellant filed a timely appeal from a February 13, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

**ISSUE**

The issue is whether OWCP properly terminated appellant's compensation benefits effective February 13, 2013 for the accepted conditions.

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<sup>1</sup> The original February 12, 2013 OWCP decision terminated compensation benefits effective January 9, 2013. In a February 27, 2013 letter, it advised the correct date of the decision and termination was February 13, 2013.

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

## **FACTUAL HISTORY**

On January 10, 1985 appellant, then a 49-year-old tobacco grader, was involved in an automobile accident while on travel duty status. He was an unrestrained driver (seat belts were not present) when a car pulled out in front of him and struck him head on. Appellant's head went through the windshield during the crash. OWCP accepted the claim for multiple contusions to the head and left leg; cervical sprain; lumbosacral sprain, cervical spondylosis with degenerative disc disease at C4-6 and herniated disc of C5-6 with temporal/occipital headaches and paid appropriate compensation. Appellant worked until February 19, 1985, when he stopped due to a recurrence of disability related to his back. He did not return to his job in the federal service, but worked intermittently in the private sector as a security guard, in lawn maintenance, a truck driver and a doorman at a hotel. Appellant was involved in two automobile accidents on or about May 26, 1989 and in February 1999. He currently is not working.

In a September 5, 2012 letter, appellant informed OWCP that he did not have a physician who knew the history of his ongoing problems resulting from his injury as his regular physicians did not want to be bothered by a workman's compensation claim due to the January 10, 1985 work injury. He asked that it schedule him for an examination.

In order to determine appellant's current condition and residuals from his accepted January 10, 1985 work injury, OWCP referred him for a second opinion examination to Dr. Edward G. Fisher, a Board-certified orthopedic surgeon. In a November 3, 2012 report, Dr. Fisher noted the history of appellant's work injury, reviewed the medical record and presented findings on examination of the head/scalp, cervical area, back and lower extremities. He stated the examination revealed no objective findings. The neurological examination, including the cranial nerves, was normal with no radicular signs or neurological deficits present over the upper or lower extremities. Dr. Fisher stated that the accepted multiple contusions to the head and left leg and the lumbar and cervical strains had resolved with no residuals. He noted there was multilevel degenerative cervical disc disease and facet joint hypertrophy by way of November 2008 x-ray and temporal and occipital headaches by way of history. There was no sufficient medical evidence to support that the work-related contusions to the head and left leg; lumbar and cervical strains, cervical spondylosis with degenerative disc disease C4-6 and herniated disc of C5-6 with temporal/occipital headaches were still present and active. Appellant's examination revealed no objective findings and Dr. Fisher explained that the contusions over the head and left leg as well as the lumbar and cervical strains were soft tissue injuries had healed and resolved within two to three months after the injury occurred and were not clinically present on examination. The cervical spondylosis with degenerative disc disease C4-5 and herniated disc C5-6 were still present by way of 2009 x-ray; however, Dr. Fisher found no objective findings over the cervical or upper extremities for active residuals of this condition. The examination of the head and scalp was entirely normal and the neurological examination did not support active residuals of the temporal/occipital headaches. Dr. Fisher opined that appellant had no active residuals from his work-related conditions. With regards to appellant's headaches, he stated that the cranial nerves were bilaterally intact and palpation of the head/scalp, cervical area was nontender and there was no muscle spasms, muscle guarding or trigger points over the cervical muscles or trapezius muscles bilaterally. Dr. Fisher found that appellant had full range of motion of the neck in flexion and extension and lateral rotation and bending without discomfort and the Spurling's test was negative bilaterally. He noted that appellant had stated that headaches came on instantaneously and last for a few seconds and were not related to any

movement of the head or activity. Dr. Fisher opined that appellant's headache complaints were not related to the accepted work-related cervical conditions. He completed the work capacity evaluation finding no work restrictions.

On January 9, 2013 OWCP issued a notice of proposed termination of compensation. It found the weight of the medical evidence was represented by the opinion of Dr. Fisher, the second opinion physician. OWCP allowed appellant 30 days to submit additional evidence or legal argument in response to the proposed termination.

In response, appellant submitted a January 12, 2013 narrative statement. He disagreed with Dr. Fisher's opinion based on the fact that his chiropractor, Dr. James R. Fick, a Board-certified neurosurgeon, had treated him with adjustments and physical therapy about 30 times in the year 2012. Appellant stated that at times he could barely walk into his office. He was forced to take a disability or early retirement due to not being able to perform his duties as a United States Department of Agriculture tobacco grader. Appellant disagreed with the proposed action. About two years prior, when he was in Washington, he had to use a wheelchair to move around. Appellant contended that Dr. Fisher did not want to hear his explanation as to why his body shuts down like an electrical short. He did not submit any additional medical evidence.

By decision dated February 13, 2013, OWCP terminated appellant's medical and wage-loss benefits effective February 13, 2013. It found that Dr. Fisher's referral opinion represented the weight of the medical evidence.<sup>3</sup>

### **LEGAL PRECEDENT**

Once OWCP has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.<sup>7</sup> 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.<sup>8</sup>

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<sup>3</sup> See *supra* note 1.

<sup>4</sup> *Bernadine P. Taylor*, 54 ECAB 342 (2003).

<sup>5</sup> *Id.*

<sup>6</sup> *Gewin C. Hawkins*, 52 ECAB 242 (2001).

<sup>7</sup> *Roger G. Payne*, 55 ECAB 535 (2004).

<sup>8</sup> *Pamela K. Guesford*, 53 ECAB 726 (2002).

## ANALYSIS

Appellant's January 10, 1985 claim was accepted for multiple contusions to the head and left leg; cervical sprain; lumbosacral sprain, cervical spondylosis with degenerative disc disease at C4-6 and herniated disc of C5-6 with temporal/occipital headaches. The most recent medical reports from his treating physicians concerning his medical conditions are from 2003. In 2012, OWCP referred appellant to Dr. Fisher for a second opinion evaluation to determine the nature and extent of any residuals of the January 10, 1985 work injury.

In a November 1, 2012 report, Dr. Fisher described the history of injury and appellant's complaints and reported physical findings. He found no objective evidence of ongoing residuals of the accepted conditions. On physical examination, there were no objective findings. Dr. Fisher indicated that the neurological examination, including the cranial nerves, was normal with no radicular signs or neurological deficits present over the upper or lower extremities. He stated that the multiple contusions to the head and left leg and the lumbar and cervical strains were healed and had resolved with no residuals. While there was multilevel degenerative cervical disc disease and facet joint hypertrophy by way of November 2008 x-ray, Dr. Fisher stated that there were no objective findings over the cervical or upper extremities of active residuals of that condition. He further stated that while there were temporal and occipital headaches by way of history, examination of the head and scalp was normal and the neurological examination did not support active residuals of the temporal/occipital headaches. Dr. Fisher also stated that appellant's description of the headaches was not related to the accepted work-related cervical conditions as they were not related to movement of the head or activity and only lasted a few seconds.

The Board finds that Dr. Fisher had a full and accurate knowledge of the relevant facts and evaluated the course of appellant's condition. Dr. Fisher provided a review of the records, diagnostic tests and performed a thorough physical examination. He addressed his own examination findings as well as the medical records to reach a reasoned conclusion regarding appellant's condition.<sup>9</sup> Dr. Fisher found no basis to support that appellant had injury residuals or work-related disability from the accepted conditions. His opinion as set forth in his November 3, 2012 report is found to be probative and reliable. At the time appellant's benefits were terminated, Dr. Fisher found no residuals or ongoing disability attributable to appellant's accepted conditions. The Board finds that Dr. Fisher's opinion constitutes the weight of the medical evidence and is sufficient to justify OWCP's termination of benefits for the accepted conditions.

On appeal, appellant contends he never knows when the pain in his back is going to occur and when his nerves tingle so bad he wants to scream. He stated he was forced to go on disability and received physical therapy for his back when he could barely walk from the pain. The medical evidence, as represented by Dr. Fisher's referral opinion, does not support ongoing residuals or disability due to the accepted motor vehicle accident. On appeal, appellant enclosed medical statements paid by his insurance for treatment since the 1989 accident. The Board can

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<sup>9</sup> See *Michael S. Mina*, 57 ECAB 379 (2006) (the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion are facts which determine the weight to be given to each individual report).

review only evidence that was before OWCP at the time of the final decision.<sup>10</sup> Additionally, the Board notes that appellant attributed his need for treatment to his 1989 accident, which was nonwork related.

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 met its burden of proof to terminate appellant's benefits effective February 13, 2013 on the grounds that his accepted conditions had ceased without residuals.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 13, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 21, 2013  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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

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<sup>10</sup> 20 C.F.R. § 501.2(c)(1).