



## **FACTUAL HISTORY**

On March 26, 2012 appellant, then a 62-year-old police officer, sustained a back and wrist injury when he fell out of a chair that was missing a wheel. OWCP accepted the claim for right wrist sprain and lumbar sprain. Appellant returned to work full-time light duty on June 11, 2012 and stopped work completely on October 24, 2012. An x-ray of the lumbar spine on March 27, 2012 revealed status post posterior fusion at L4-5. An x-ray of the left wrist revealed no abnormalities.

Appellant came under the treatment of Dr. Ronald C. Childs, a Board-certified orthopedist, from April 3 to May 24, 2012, for back, leg and right wrist pain that occurred after falling from a chair at work. Dr. Childs opined that appellant required a laminectomy and fusion at L3-4 and L4-5. He noted that appellant required surgery as a result of his original injury, which necessitated a fusion at L4-5 and his most recent recurrent injury, which aggravated his preexisting condition. Dr. Childs returned appellant to work on May 28, 2012 with restrictions.

In a July 20, 2012 report, Dr. Childs noted that appellant's fall on March 26, 2012 exacerbated his preexisting lumbar spinal stenosis and he recommended a laminectomy with fusion on L3-5 and a revision of L4-5. Appellant was treated by Dr. Richard S. Milford, a Board-certified orthopedist, from April 13 to June 22, 2012, for a reinjury of the right wrist and back, which occurred after a fall at work on March 26, 2012. On June 22, 2012 Dr. Milford discharged appellant from his care and returned him to work. Appellant underwent three epidural steroid injections performed by Dr. Brett Robinson, a Board-certified neurologist, in April 2012.

On July 24, 2012 OWCP requested that an OWCP medical adviser address the medical necessity of the proposed laminectomy at L3-5 and removal of the spinal lamina. On July 24, 2012 the medical adviser opined that the proposed surgery was not necessitated by the March 26, 2012 injury.

Appellant filed a claim for compensation for total disability for the period July 13 to 16, 2012. In a decision dated October 9, 2012, OWCP denied his claim for wage-loss compensation.

On October 30, 2012 appellant requested a review of the written record. He submitted an April 9, 2012 lumbar spine magnetic resonance imaging scan, which revealed L1-2 discogenic disease, spondylosis and posterior bulge, mild degree of facet joint osteoarthropathy bilaterally at L2-3, Grade 1 spondylolisthesis at L3-4 with spinal stenosis, evidence of discectomy decompressive laminectomy and fusion at L4-5 and broad-based herniated disc and spinal stenosis at L5-S1.

On October 24, 2012 Dr. Childs noted that appellant had undergone a laminectomy at L4-5 and was not completely free of symptoms prior to the new work injury on March 26, 2012. He noted that conservative treatment failed and that the March 26, 2012 injury was an exacerbation of the preexisting condition and he required additional surgery. In an October 24, 2012 form report, Dr. Childs recommended a lumbar laminectomy and fusion at L3-4. He opined that appellant could not perform light-duty work because he had a weak left leg. In an

October 24, 2012 duty status report, Dr. Childs noted that appellant was unable to perform his usual duties and was totally disabled.

On November 29, 2012 OWCP referred appellant to Dr. Robert A. Smith, a Board-certified orthopedist, to determine if the accepted conditions had resolved. In a December 20, 2012 report, Dr. Smith indicated that he reviewed the records provided and examined appellant. He noted findings of a well-healed back scar from a prior surgery, no evidence of spasm, atrophy, trigger points or deformity about the back, self-limited active spinal range of motion due to pain, no spasm or rigidity during the maneuvers and normal neurological examination except for residual atrophy of the left leg due to the prior surgery. Dr. Smith noted that the wrist had a well-healed scar from prior surgery, no deformity or adjacent atrophy about the forearm or hand, no swelling of the wrist, active range of motion of the wrist was satisfactory and functional without instability or crepitation and normal neurological examination. He diagnosed sprain of the right wrist and lumbar spine and opined that the accepted conditions had resolved and noted that there was nothing in the record to suggest the degenerative spinal condition and previous surgery were in any way caused or aggravated structurally by the March 26, 2012 injury. Rather, the degenerative spinal condition was related to appellant's previous nonindustrial degenerative disease. Dr. Smith noted that appellant needed no additional treatment for the wrist. He opined that based on the current clinical examination appellant's soft tissue sprains of the wrist and back had resolved without residuals and his current symptoms and clinical condition were related to the preexisting nonindustrial factors. Dr. Smith noted that appellant was at maximum medical improvement with regard to the March 26, 2012 incident for resolved sprains of the right hand and wrist and lumbar spine and could return to his previous work status with a lifting restriction related to the nonindustrial degenerative condition.

On January 7, 2013 OWCP denied appellant's request for a review of the written record. It found that the request was not timely filed.

On January 8, 2013 OWCP requested that Dr. Childs review the second opinion report from Dr. Smith and provide comments.

In a decision dated January 11, 2013, OWCP denied appellant's claim for compensation for the periods October 25 to November 9 and November 12 to 23, 2012.

On January 16, 2013 OWCP proposed to terminate all benefits finding that Dr. Smith's December 20, 2012 report established no continuing residuals of his work-related conditions.

In a decision dated February 11, 2013, OWCP denied appellant's claim for compensation for the period December 10 to 21, 2012.

In a decision dated March 19, 2013, OWCP terminated appellant's medical and wage-loss benefits effective March 14, 2013 finding that the medical evidence established that he had no continuing residuals of his accepted conditions.

In an undated appeal request form, postmarked April 22, 2013 and date stamped by OWCP on April 26, 2013, appellant requested an oral hearing from the March 19, 2013 decision. Appellant submitted a May 13, 2013 report from Dr. Childs, who noted appellant's complaints of

left leg pain and weakness and recommended surgery and epidural injections. He also submitted correspondence from his senator.

In a decision dated May 29, 2013, OWCP denied appellant's request for an oral hearing. It found that the request was not timely filed. Appellant was informed that his case had been considered in relation to the issues involved and that the request was further denied for the reason that the issues in this case could be addressed by requesting reconsideration from OWCP and submitting evidence not previously considered.

### **LEGAL PRECEDENT -- ISSUE 1**

Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>2</sup> After it has determined that an employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.<sup>3</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, OWCP must establish that a claimant no longer has residuals of an employment-related condition, which requires further medical treatment.<sup>4</sup>

### **ANALYSIS -- ISSUE 1**

OWCP accepted appellant's claim for right wrist sprain and sprain of the back, lumbar region from the March 26, 2012 work injury. It referred him for a second opinion evaluation by Dr. Smith.

In his December 20, 2012 report, Dr. Smith provided an extensive review of appellant's medical history, reported examination findings. He found that there were no clinical findings of any residuals or disability causally related to the accepted right wrist sprain and lumbar sprain of March 26, 2012. Dr. Smith diagnosed sprain of the right wrist and lumbar spine and opined that there were no other conditions related to this work injury. He opined that the accepted conditions had resolved. Dr. Smith found no evidence to suggest the degenerative spinal condition and previous surgery were in any way caused or aggravated structurally by the March 26, 2012 injury, rather, it was related to appellant's previous nonindustrial degenerative disease. He noted that based on the current clinical examination appellant's soft tissue sprains of the wrist and back have resolved without residuals and his current symptoms and clinical condition are related to the preexisting nonindustrial factors. Dr. Smith noted that appellant could return to his previous work status with a lifting restriction unrelated to the nonindustrial degenerative condition.

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<sup>2</sup> *Gewin C. Hawkins*, 52 ECAB 242 (2001); *Alice J. Tysinger*, 51 ECAB 638 (2000).

<sup>3</sup> *Mary A. Lowe*, 52 ECAB 223 (2001).

<sup>4</sup> *Id.*; *Leonard M. Burger*, 51 ECAB 369 (2000).

The Board finds that Dr. Smith's report represents the weight of the medical evidence and that OWCP properly relied on his report in terminating appellant's compensation benefits on March 14, 2013. Dr. Smith'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 conditions had resolved and that continuing symptoms were due to nonindustrial factors. Dr. Smith reported no basis on which to find that appellant had any continuing residuals of his accepted right wrist sprain and back sprain. There is no contemporaneous medical evidence of equal weight supporting appellant's claim for continuing residuals of the accepted right wrist sprain and lumbar sprain.

Appellant was treated by Dr. Childs, from April 3 to July 20, 2012, for a back, leg and right wrist pain, which occurred after a fall at work. Dr. Childs opined that appellant required surgery for laminectomy and fusion at L3-4 and L4-5, which was the result of his prior injury necessitating a fusion at L4-5 and a recurrent injury on March 26, 2012. On October 24, 2012 he noted that appellant underwent a laminectomy at L4-5 and was not completely free of symptoms prior to the new injury on March 26, 2012 at work. Dr. Childs noted that the March 26, 2012 injury was an exacerbation of the preexisting condition and he required surgery. Although he supported that appellant had continuing symptoms, none of his reports specifically explain how any continuing disability or condition was causally related to the accepted employment injuries of March 26, 2012.<sup>5</sup> The Board also notes that OWCP did not accept aggravation of L3-4 and L4-5 as being work related.<sup>6</sup> While Dr. Childs stated that the work injury aggravated the preexisting back condition, he did not offer any medical reasoning in support of his conclusion.

Other reports from Dr. Milford, from April 13 to June 22, 2012, noted appellant's treatment for a reinjury of the right wrist and back on March 26, 2012. On June 22, 2012 he noted good range of motion of the right wrist, no swelling, minimal tenderness and discharged appellant from his care and returned him to work. Dr. Milford does not support that appellant had residuals of his accepted work injuries rather he discharged appellant from his care and returned him to work.

On appeal, appellant asserted that he was discriminated against, that he did nothing wrong and was paying for his work-related injury. He noted the March 26, 2012 injury exacerbated his back and wrist conditions. The Board notes that, in his December 20, 2012 report, Dr. Smith found that there were no clinical findings of any residuals or disability causally related to the accepted right wrist sprain and low back sprain of March 26, 2012. He opined that the accepted conditions had resolved and noted that there was no evidence to support that the degenerative spinal condition and previous surgery were in any way caused or aggravated by the March 26, 2012 injury. Although appellant submitted reports from Drs. Child and Milford, these reports fail to specifically address how any continuing disability was causally related to the accepted employment injuries of March 26, 2012.

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<sup>5</sup> See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

<sup>6</sup> See *Jaja K. Asaramo*, 55 ECAB 200 (2004) (for conditions not accepted or approved by OWCP, the claimant bears the burden of proof to establish that the condition is causally related to the employment injury).

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.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8124(b)(1) of FECA provides that “a claimant for compensation not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary.”<sup>7</sup> Sections 10.617 and 10.618 of the federal regulations implementing this section of FECA provides that a claimant shall be afforded a choice of an oral hearing or a review of the written record by a representative of the Secretary.<sup>8</sup> A claimant is entitled to a hearing or review of the written record as a matter of right only if the request is filed within the requisite 30 days as determined by postmark or other carrier’s date marking and before the claimant has requested reconsideration.<sup>9</sup> Although there is no right to a review of the written record or an oral hearing if not requested within the 30-day time period, OWCP may within its discretionary powers grant or deny appellant’s request and must exercise its discretion.<sup>10</sup> OWCP’s procedures require that it exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration under section 8128(a).<sup>11</sup>

### **ANALYSIS -- ISSUE 2**

Appellant requested an oral hearing in an undated appeal form received on April 26, 2013 and date stamped April 22, 2013. As the hearing request was made more than 30 days after issuance of the March 19, 2013 OWCP decision, his request for an oral hearing was untimely filed and he is not entitled to an oral hearing as a matter of right.

OWCP also notified appellant that it had considered the matter in relation to the issue involved and indicated that additional argument and evidence could be submitted with a request for reconsideration. It has broad administrative discretion in choosing means to achieve its general objective of ensuring that an employee recovers from his or her injury to the fullest extent possible in the shortest amount of time. An abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment or actions taken, which are contrary to both logic and probable deductions from established facts.<sup>12</sup> There is no indication that OWCP abused its discretion in this case in finding that appellant could further pursue the matter through the reconsideration process.

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<sup>7</sup> 5 U.S.C. § 8124(b)(1).

<sup>8</sup> 20 C.F.R. §§ 10.616, 10.617.

<sup>9</sup> *Id.* at § 10.616(a).

<sup>10</sup> *Eddie Franklin*, 51 ECAB 223 (1999); *Delmont L. Thompson*, 51 ECAB 155 (1999).

<sup>11</sup> See *R.T.*, Docket No. 08-408 (issued December 16, 2008); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4(b)(3) (October 1992).

<sup>12</sup> *Samuel R. Johnson*, 51 ECAB 612 (2000).

Consequently, OWCP properly denied appellant's request for an oral hearing.

**CONCLUSION**

The Board finds that OWCP has met its burden of proof to terminate benefits effective March 14, 2013. The Board further finds that OWCP properly denied appellant's request for an oral hearing pursuant to 5 U.S.C. § 8124(b)(1).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated May 29 and March 19, 2013 are affirmed.

Issued: November 19, 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