

FACTUAL HISTORY

In mid-2000, OWCP accepted that appellant, then a 40-year-old letter carrier, sustained a neck sprain and adhesive capsulitis of his right shoulder due to performing repetitive mail casing over an extended period. He began work with restrictions for two hours a day on July 2, 2010 and for four hours a day on July 6, 2010. Appellant stopped work on December 9, 2010, but returned to part-time work in October 2011.

In an August 19, 2010 report, Dr. Leroy Pelicci, an attending Board-certified neurologist, stated that appellant's current clinical examination findings included persistent neck spasm with limitation of movement. He had decreased reflex tone referable to his right upper extremity, with decreased strength on the right and decreased sensation over the C6-C7 dermatome. Dr. Pelicci stated that appellant had right shoulder tenderness with limitation of movement in all directions. Magnetic resonance imaging (MRI) scan testing showed encroachment of the neural foramina at the C4 through C7 levels as well as disc herniations at C4 and C5. Dr. Pelicci recommended that, due to his work-related injuries, appellant could only perform modified duty for four hours a day.

In a September 22, 2010 report, Dr. Peter A. Feinstein, a Board-certified orthopedic surgeon serving as an OWCP referral physician, reported findings on physical examination. He found that appellant had made a full and complete recovery from any neck sprain. Dr. Feinstein stated that appellant still had some mild adhesive capsulitis in his right shoulder, for which his treatment with an occasional steroid injection perhaps once or twice a year was reasonable. Appellant had underlying degenerative changes and symptomatic age-related problems throughout his entire spine which were not work related. Dr. Feinstein noted that there was no evidence to establish that any herniated discs or degenerative changes were related to work factors. With respect to the work-related shoulder condition, appellant would be restricted from repetitive use of his right arm at chest level or higher. Dr. Feinstein advised that appellant could perform light-duty work for eight hours a day, including casing mail if he did so below chest level.

In February 2011, OWCP determined that there was a conflict in medical opinion between Dr. Pelicci and Dr. Feinstein regarding the nature of appellant's work-related condition and the extent of his work restrictions. It referred appellant to Dr. William Charlton, a Board-certified orthopedic surgeon, for an impartial medical examination. In a March 14, 2011 report, Dr. Charlton found that appellant's adhesive capsulitis had resolved but noted that he still required restrictions of limited overhead reaching and no lifting more than 25 pounds.

Appellant filed claims for compensation (Form CA-7) for disability from January 5 to April 8, 2011. He submitted a January 4, 2011 report from Dr. Philip Hlavac, an attending Board-certified neurosurgeon, who noted that appellant complained of neck pain that was out of proportion to the findings on diagnostic testing. In reports dated January 28, February 28, March 14 and 21, 2011, Dr. Pelicci advised that appellant had neck and right shoulder problems and that he could only work on a part-time basis.

In an April 14, 2011 decision, OWCP denied appellant's claim for wage-loss benefits for the period January 5 to April 8, 2011. It found that he did not submit sufficient medical evidence.²

In September 2011, OWCP requested that Dr. Charlton clarify his March 14, 2011 report. In an October 10, 2011 report, Dr. Charlton stated that appellant's neck strain had resolved, but noted that his progressive cervical deterioration was not directly related to the accepted neck injury. He recommended work restrictions but did not clearly indicate the reason for these restrictions.

In a March 30, 2012 decision, OWCP determined that there was a conflict in the medical opinion evidence due to Dr. Charlton's failure to adequately clarify his opinion on appellant's medical condition and ability to work. The case was remanded to OWCP for referral of appellant to a new impartial medical specialist.

OWCP referred appellant Dr. Thomas DiBenedetto, a Board-certified orthopedic surgeon, for an impartial medical examination and opinion on the nature and extent of his work-related condition and on his need for work restrictions.³

In a May 8, 2012 report, Dr. DiBenedetto described appellant's medical history and reported his findings on physical examination. He noted that, after the physical examination and review of the materials provided, he felt that appellant's degenerative cervical condition, with bulging discs, protrusions and herniations, was not related to his federal employment, but rather was due to the aging process. Dr. DiBenedetto stated that he agreed with Dr. Feinstein that there was no need for any restrictions regarding any accepted work-related injury. He indicated that appellant had recovered from his accepted conditions of the neck sprain and right shoulder adhesive capsulitis and stated:

“[Appellant's] physical examination showed that he had decreased active motion, but his passive motion was normal. This is inconsistent with anyone having adhesive capsulitis. I also found no evidence of a continued cervical sprain on my physical examination. Therefore, I would not place any restrictions on [appellant] vocational activities. I do not believe his complaints are related to his employment for the U.S. Postal Service.”⁴

In a May 21, 2012 decision, OWCP denied appellant's claim for wage-loss benefits for the period January 5 to April 8, 2011 on the grounds that he did not submit sufficient medical evidence in support thereof.

² In a November 22, 2011 decision, OWCP affirmed its April 14, 2011 decision.

³ Dr. DiBenedetto was asked whether he believed appellant continued to have work-related right shoulder capsulitis and cervical sprain and whether the cervical degenerative changes (including disc herniations) seen on MRI scan were causally related to his employment.

⁴ In an attached form, Dr. DiBenedetto indicated that appellant could perform his usual job.

Appellant submitted reports dated in early 2012 from Dr. Pelicci, who indicated that appellant continued to have neck and right shoulder symptoms, including radiating pain and muscle spasms. In several of the reports, Dr. Pelicci related appellant's symptoms to conditions that were not accepted as employment related, such as cervical disc herniations.

In a June 7, 2012 letter, OWCP advised appellant that it proposed to terminate his wage-loss compensation and medical benefits on the grounds that his accepted work injuries, had resolved. It noted that this proposed action was based on the opinion of Dr. DiBenedetto. Appellant was also informed that he had 30 days in which to submit additional evidence in support of his claim.

Appellant submitted additional reports of Dr. Pelicci. In a June 26, 2012 report, Dr. Pelicci stated that Dr. DiBenedetto did not "appreciate the full impact of [appellant's] neural/medical condition."

By decision dated July 19, 2012, OWCP terminated appellant's wage-loss compensation and medical benefits effective July 19, 2012 finding that he had no residuals of his accepted work injuries after that date.

Appellant submitted reports dated between July and November 2012 from Dr. Pelicci, who stated that appellant reported that he was struggling with neck pain. In several reports, Dr. Pelicci indicated that the reflex tone of appellant's neck was still diminished on his right, compared to his left and that he had neck spasms.

In a December 3, 2012 decision, an OWCP hearing representative affirmed the May 21, 2012 decision finding that appellant had not established disability for the period January 5 to April 8, 2011.

In a December 21, 2012 decision, another OWCP hearing representative affirmed the July 19, 2012 termination decision. The weight of the medical evidence continued to rest with the well-rationalized opinion of Dr. DiBenedetto, the impartial medical specialist.

LEGAL PRECEDENT -- ISSUE 1

Under FECA, once OWCP has accepted a claim it has the burden of justifying termination or modification of compensation benefits.⁵ OWCP may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁶ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁷

Section 8123(a) of FECA provides in pertinent part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee,

⁵ *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

⁶ *Id.*

⁷ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

the Secretary shall appoint a third physician who shall make an examination.”⁸ In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁹

ANALYSIS -- ISSUE 1

OWCP properly determined that there was a conflict in the medical opinion between Dr. Pelicci, an attending Board-certified neurologist, and Dr. Feinstein, a Board-certified orthopedic surgeon acting as an OWCP referral physician, on the issue of whether appellant continued to have residuals of his accepted work injuries.¹⁰ In order to resolve the conflict, OWCP properly referred appellant, pursuant to section 8123(a) of FECA, to Dr. DiBenedetto, a Board-certified orthopedic surgeon, for an impartial medical examination and an opinion on the matter.

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. DiBenedetto, the impartial medical specialist selected to resolve the conflict in the medical opinion. The May 8, 2010 report of Dr. DiBenedetto establishes that appellant had no disability due to his accepted work injuries after July 19, 2012.

In his May 8, 2012 report, Dr. DiBenedetto noted that, after the physical examination and review of the materials provided, he felt that appellant’s degenerative cervical condition, with bulging discs, protrusions and herniations, was not related to his federal employment, but rather was due to the aging process. He indicated that appellant had recovered from his accepted conditions of the neck sprain and right shoulder adhesive capsulitis. Dr. DiBenedetto noted inconsistencies in appellant’s physical examination and concluded that he could perform his regular work without restrictions.

The Board has carefully reviewed the opinion of Dr. DiBenedetto and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. DiBenedetto provided a thorough factual and medical history and accurately summarized the relevant medical evidence.¹¹ He provided medical rationale for his opinion by explaining that appellant did not exhibit objective evidence of the accepted work injuries. Rather, appellant’s problems were due to the natural progression of his preexisting degenerative condition.

Prior to the termination of compensation, appellant submitted a number of reports in which Dr. Pelicci indicated that he continued to have neck and right shoulder symptoms,

⁸ 5 U.S.C. § 8123(a).

⁹ *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

¹⁰ OWCP accepted that appellant sustained a neck sprain and adhesive capsulitis of his right shoulder due to performing his repetitive mail casing duties over an extended period.

¹¹ *See Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

including radiating pain and muscle spasms. However, as Dr. Pelicci was on one side of the conflict, his additional reports are essentially duplicative of his stated opinion and are insufficient to give rise to a new conflict.¹² Moreover, he appeared to relate appellant's symptoms to conditions that were not accepted, such as cervical disc herniations. As noted above, Dr. DiBenedetto provided an opinion that appellant's cervical herniations were not work related.¹³

LEGAL PRECEDENT -- ISSUE 2

An employee seeking benefits under FECA has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.¹⁴ The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹⁵

Whether a particular employment injury causes disability for employment and the duration of that disability are medical issues, which must be proved by a preponderance of reliable, probative and substantial medical evidence.¹⁶

ANALYSIS -- ISSUE 2

Appellant filed claims for compensation (Form CA-7) claiming that he had disability from January 5 to April 8, 2011. The Board finds that he did not submit sufficient medical evidence to establish such work-related disability.

Appellant submitted a January 4, 2011 report in which Dr. Hlavac, an attending Board-certified neurosurgeon, indicated that he complained of neck pain that was out of proportion to the findings on diagnostic testing. In January 28, February 28, March 14 and 21, 2011 reports, Dr. Pelicci continued to report that appellant had neck and right shoulder problems and that he could only work on a part-time basis. However, none of these reports contained a rationalized medical condition explaining how appellant had work-related disability for the claimed period,

¹² See *Richard O'Brien*, 53 ECAB 234 (2001).

¹³ After the termination, appellant submitted additional reports, but these reports did not contain a rationalized opinion that appellant's continuing symptoms were work related.

¹⁴ *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

¹⁵ See *E.J.*, Docket No. 09-1481 (issued February 19, 2010).

¹⁶ *W.D.*, Docket No. 09-658 (issued October 22, 2009).

January 5 to April 8, 2011. As previously noted, Dr. Pelicci appeared to believe that appellant had disability due to conditions which have not been accepted as work related, such as cervical herniations.

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 wage-loss compensation and medical benefits effective July 19, 2012 on the grounds that he had no residuals of his accepted work injuries after that date. The Board further finds that he did not meet his burden of proof to establish that he had work-related disability from January 5 to April 8, 2011.

ORDER

IT IS HEREBY ORDERED THAT the December 21 and 3, 2012 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 18, 2013
Washington, DC

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

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

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