

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

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**J.A., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Norfolk, VA, Employer**

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**Docket No. 13-1910  
Issued: April 9, 2014**

*Appearances:*  
*William H. Brawner, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
ALEC J. KOROMILAS, Alternate Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On August 13, 2013 appellant, through his attorney, filed a timely appeal from the April 8, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 appellant met his burden of proof to establish disability on or after September 28, 1979 due to his accepted work injuries.

**FACTUAL HISTORY**

OWCP accepted that on November 4, 1978 appellant, then a 40-year-old mail carrier, sustained cervical and low back strains when his postal vehicle was struck from behind by

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

another vehicle.<sup>2</sup> Appellant received continuation of pay from November 7 to December 25, 1978 and disability compensation for intermittent periods between December 26, 1978 and August 29, 1979. He returned to limited-duty work on a full-time basis on August 30, 1979 without any wage loss.

Appellant resigned from the employing establishment effective September 28, 1979. He filed a claim alleging that he was entitled to disability compensation beginning September 28, 1979 due to his accepted work injuries.

In a report dated February 22, 1984, Dr. Roger L. Weir, an attending Board-certified neurologist, stated, “[appellant’s] problems with his back and neck are caused by processes which were induced by his injuries in 1972 and 1978. Similarly, [his] work limitations are due to these injuries.”

In a May 8, 1984 report, Dr. Weir stated that appellant was first seen in January 1981 when he presented with pain in his back, neck and legs. Appellant reported that “his back had been going out” since the fall of 1981 and that he would fall to the ground and be unable to get up.

By decision dated January 9, 1986, OWCP denied appellant’s claim. It found that he failed to submit sufficient medical evidence to establish that he was disabled on or after September 28, 1979 due to his accepted work injuries.

In an August 15, 2011 letter, appellant, through counsel, requested reconsideration of his claim. Counsel indicated that there was some connection to a “decision of May 24, 1983 by the Merit Systems Protection Board” and appellant’s entitlement to disability compensation under FECA. He stated that, once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation. Counsel asserted that it violated appellant’s due process rights and did not justify its termination of his compensation.

Appellant submitted an August 13, 1987 report in which Dr. Weir indicated that his symptoms seemed to fluctuate and stated, “His symptoms may be exacerbated by returning to a job with sustained physical activities.” Dr. Weir diagnosed back pain, neck pain and muscle spasms.

In a January 9, 1991 report, Dr. Weir indicated that appellant’s symptoms would be markedly exacerbated by his prior work. He diagnosed back pain, neck pain, muscle spasm, hypertension and hypercholesterolemia. Appellant submitted additional reports of Dr. Weir and other attending physicians which did not address his accepted work injuries or contain an opinion on the cause of his claimed disability. He resubmitted documents to OWCP, including the February 22 and May 8, 1984 reports of Dr. Weir.

In an April 8, 2013 decision, OWCP affirmed the denial of appellant’s claim. It found that he had not submitted sufficient medical evidence to establish disability on or after September 28, 1979 due to his accepted work injuries.

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<sup>2</sup> OWCP previously accepted that appellant sustained a lumbar strain on January 8, 1972.

## LEGAL PRECEDENT

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.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> It is well established that the possibility of future injury constitutes no basis for the payment of compensation.<sup>6</sup> The Board has long held that entitlement to benefits under statutes administered by other federal agencies does not establish entitlement to benefits under FECA.<sup>7</sup>

## ANALYSIS

OWCP accepted that on November 4, 1978 appellant sustained cervical and low back strains when his postal vehicle was struck from behind by another vehicle.<sup>8</sup> Appellant resigned from the employing establishment effective September 28, 1979 and claimed that he was entitled to receive disability compensation beginning September 28, 1979 due to his accepted work injuries. OWCP denied his claim for work-related disability on and after September 28, 1979.

The Board finds that appellant did not submit sufficient medical evidence to establish that he was disabled on or after September 28, 1979.<sup>9</sup> Before OWCP and on appeal, counsel argued that it improperly terminated appellant’s compensation effective September 28, 1979.<sup>10</sup> The

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<sup>3</sup> *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

<sup>4</sup> *See E.J.*, Docket No. 09-1481 (issued February 19, 2010).

<sup>5</sup> *W.D.*, Docket No. 09-658 (issued October 22, 2009).

<sup>6</sup> *Gaeten F. Valenza*, 39 ECAB 1349, 1356 (1988).

<sup>7</sup> *See Donald Johnson*, 44 ECAB 540, 551 (1993).

<sup>8</sup> OWCP previously accepted that appellant sustained a lumbar strain on January 8, 1972.

<sup>9</sup> The Board notes that any medical opinion evidence that appellant submitted to support his claim for compensation benefits should reflect a correct history and the physician should offer a medically sound explanation of how the accepted work injuries caused disability for the claimed period.

<sup>10</sup> In a brief submitted on appeal, counsel discussed a number of OWCP cases regarding its burden of proof to terminate compensation. He argued that it violated appellant’s due process rights when it “retroactively” terminated his compensation.

record, however, establishes that appellant returned to work without wage loss on August 30, 1979. Appellant was not receiving compensation when he resigned and stopped work on September 28, 1979. Therefore, OWCP did not terminate compensation. Appellant has the burden of proof to establish entitlement to compensation on or after September 28, 1979 due to his accepted work injuries.<sup>11</sup>

Appellant submitted a number of reports in which attending physicians discussed his medical conditions, but none of these reports contained a rationalized medical opinion relating any disability on or after September 28, 1979 to his January 8, 1972 or November 4, 1978 work injuries.

In a report dated February 22, 1984, Dr. Roger L. Weir, an attending Board-certified neurologist, stated, “[appellant’s] problems with his back and neck are caused by processes which were induced by his injuries in 1972 and 1978. Similarly, his work limitations are due to these injuries.” However, this report is of limited probative value on the relevant issue of this case because Dr. Weir did not provide any description of appellant’s January 8, 1972 and November 4, 1978 work injuries or explain how these soft tissue injuries could have caused disability on or after September 28, 1979. In a May 8, 1984 report, he stated that appellant was first seen in January 1981 when he presented with pain in his back, neck and legs and that since the fall of 1981 his back had been “going out” on him. This report does not provide any explanation of the cause of his reported back problems.

In an August 13, 1987 report, Dr. Weir diagnosed back pain, neck pain and muscle spasms and stated, “[appellant’s] symptoms may be exacerbated by returning to a job with sustained physical activities.” In a January 9, 1991 report, he diagnosed back pain, neck pain, muscle spasm, hypertension and hypercholesterolemia and indicated that appellant’s symptoms would be markedly exacerbated by his prior work. However, Dr. Weir did not provide an opinion that appellant sustained any disability due to his January 8, 1972 or November 4, 1978 work injuries for any period. He seemed to suggest that appellant would sustain injury if he returned to work, but it is well established that the possibility of future injury constitutes no basis for the payment of compensation.<sup>12</sup> Appellant submitted additional reports of Dr. Weir and other attending physicians, but these reports did not address his accepted work injuries or contain an opinion on the cause of his claimed disability on or after September 28, 1979.

Counsel also noted that there was some connection of his claim to a “decision of May 24, 1983 by the Merit Systems Protection Board” and appellant’s entitlement to disability compensation under FECA. The Board has long held that entitlement to benefits under statutes administered by other federal agencies does not establish entitlement to benefits under FECA.<sup>13</sup>

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<sup>11</sup> See *supra* note 3. There also is no evidence that light duty necessitated by the work injury would not have remained available had appellant not resigned. See *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>12</sup> See *supra* note 6.

<sup>13</sup> See *supra* note 7.

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 appellant did not meet his burden of proof to establish that he sustained disability on or after September 28, 1979 due to his accepted work injuries.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 8, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 9, 2014  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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