

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

R.P., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Edison, NJ, Employer**

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**Docket Nos. 14-857 &
14-1536
Issued: August 18, 2014**

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 5, 2014 appellant, through counsel, filed a timely appeal from the October 31, 2013 and January 22, 2014 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective August 25, 2012 on the grounds that he had no residuals of his July 8, 2000 work injury after that date; and (2) whether OWCP properly rescinded its acceptance of appellant's claim for a recurrence of disability on April 10, 2010 due to his accepted right wrist conditions.

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

OWCP accepted that on July 8, 2000 appellant, then a 39-year-old letter carrier, sustained a lumbar sprain when he sat down in a straight-back chair on that date. Appellant's claim was later accepted for aggravation of lumbar disc displacement. He received disability compensation on the periodic rolls.²

By decision dated April 8, 2011, OWCP terminated appellant's entitlement to wage-loss compensation and medical benefits with respect to the July 8, 2000 injury. It found that the weight of medical opinion was represented by the July 23, 2010 report of Dr. Stanley Askin, a Board-certified orthopedic surgeon serving as an OWCP referral physician.

In a November 2, 2011 decision, an OWCP hearing representative found that Dr. Askin's report required clarification regarding appellant's continuing disability and residuals. The case was remanded to OWCP to request a supplemental report from Dr. Askin addressing whether appellant continued to have disability or residuals related to the accepted July 8, 2000 work conditions. After receiving Dr. Askin's November 28, 2011 response, OWCP terminated appellant's entitlement to wage-loss compensation and medical benefits in a December 14, 2011 decision.

In a February 16, 2012 decision, issued in connection with appellant's October 19, 1994 right wrist injury, OWCP noted that appellant's claim for a recurrence of disability on April 19, 2010 had been accepted because he was sent home without work on that date. OWCP stated, "Any bills which have been returned to you or your medical provider may be submitted for payment."³

In a March 15, 2012 decision, an OWCP hearing representative found that Dr. Askin's report was not sufficient to support the termination of wage-loss compensation and medical benefits. The case was remanded to OWCP in order to refer appellant for a new second opinion evaluation addressing his continuing work-related disability and residuals.

In a February 16, 2012 report, Dr. Frank Alario, an attending Board-certified internist, discussed appellant's medical history, including the July 8, 2000 work injury. He also described appellant's back problems, including chronic low back pain and degenerative disc disease at L4-5 and L5-S1. In a February 29, 2012 report, Dr. Peter DiPaolo, an attending Board-certified orthopedic surgeon, discussed appellant's herniated discs at L4-5 and L5-S1 and advised that he was disabled due to these conditions and needed surgery.

In an April 25, 2012 report, Dr. Kenneth Heist, a Board-certified orthopedic surgeon serving as an OWCP referral physician, discussed his review of the medical records and detailed findings on physical examination. He concluded that there was no medical evidence of a

² Under a separate claim file, OWCP accepted that on October 19, 1994 appellant sustained a right wrist fracture and ulnar nerve lesion.

³ On April 22, 2010 appellant had filed a claim for a recurrence of disability beginning April 19, 2010 due to her July 8, 2000 back injury, rather than due to her October 19, 1994 right wrist injury. It is unclear why OWCP issued its decision on this matter almost two years after the filing of the claim.

condition causally related to the July 8, 2000 lumbar injury. Dr. Heist found that there was no basis for physical restrictions due to the July 8, 2000 work injury as there were no objective findings supportive of continuing disability. He diagnosed “chronic mid-lumbar sprain” and stated:

“My clinical examination of the lumbar spine documented a restriction in the last 10 degrees of motion. I attribute this to degenerative spinal disease. There are no medical findings that the conditions causally related to the employment injury (sitting in a straight-backed chair) are still active. There are no objective findings related to the injury. There is no current disability.”

In a May 11, 2012 report, Dr. Jeffrey Oppenheimer, an attending Board-certified neurosurgeon, discussed appellant’s cervical problems. He diagnosed lumbago secondary to two-level lumbar disc disease and cervicgia with left C5, C6 and C7 radiculitis, most likely secondary to disc disease.

OWCP requested clarification of Dr. Heist’s April 25, 2012 opinion. In a July 21, 2012 addendum report, Dr. Heist further explained that there was no objective evidence that appellant’s present condition was causally related to the July 8, 2000 work injury or that there was a work-related lumbar condition that continued to be active.

By decision dated August 20, 2012, OWCP terminated appellant’s wage-loss compensation and medical benefits effective August 25, 2012. It found that Dr. Heist’s second opinion reports established that appellant had no continuing residuals or disability related to the accepted July 8, 2000 work conditions.

In an October 18, 2012 decision, issued in connection with his July 8, 2000 low back injury, OWCP advised appellant that it had accepted that he sustained a recurrence of disability on April 19, 2010. It stated, “Any bills which have been returned to you or your medical provider may be submitted for payment.”

In an October 19, 2012 decision, issued in connection with appellant’s October 19, 1994 right wrist injury, OWCP rescinded its February 16, 2012 acceptance of appellant’s claim for a recurrence of disability on April 19, 2010. It explained that the rescission was justified because the initial acceptance had been accepted under the wrong claim file. Appellant was sent home when no work was available in connection with his limited-duty work necessitated by his July 8, 2000 back injury. Therefore, it was improper to accept the recurrence claim under the file for appellant’s October 19, 1994 right wrist injury.

In connection with OWCP’s termination decision, appellant requested a hearing before an OWCP hearing representative. During the December 28, 2012 hearing, counsel argued that the reports of appellant’s attending physicians showed that he still had residuals of the July 8, 2000 work injury or at least that there was a conflict in the medical opinion evidence regarding work-related residuals between Dr. Heist and appellant’s attending physicians.⁴

⁴ Appellant submitted a November 29, 2012 report of Dr. Oppenheimer and December 14, 2011 and February 29, 2012 reports of Dr. DiPaolo which contained discussions of appellant’s back and neck problems.

In a March 14, 2013 decision, an OWCP hearing representative affirmed the August 20, 2012 termination decision, finding that the weight of the medical evidence continued to rest with the opinion of Dr. Heist.

Appellant submitted an April 12, 2013 report of Dr. Oppenheimer; the April 10, 24 and 30, 2013 reports of Dr. Alario; and a March 29, 2013 report of Dr. DiPaolo. Dr. Oppenheimer advised that appellant's neck condition was aggravated by his weight-bearing work duties. Dr. Alario expressed disagreement with Dr. Heist's opinion and stated that appellant's back problems were related to the July 8, 2000 work injury. Dr. Alario also indicated that appellant continued to have residuals of the July 8, 2000 work injury.

In a July 31, 2013 decision, OWCP affirmed its March 14, 2013 decision finding that the reports of appellant's attending physicians were of limited probative value regarding appellant's work-related residuals.

In an October 31, 2013 decision, issued in connection with appellant's October 19, 1994 right wrist injury, OWCP affirmed its October 18, 2012 decision. It rescinded its February 16, 2012 acceptance of appellant's claim for a recurrence of disability on April 19, 2010 because the acceptance had been made under the wrong claim file.

In a January 22, 2014 decision, OWCP affirmed its July 31, 2013 decision regarding the termination of appellant's wage-loss compensation and medical benefits. It found that the reports of appellant's attending physicians were of limited probative value regarding appellant's work-related residuals.

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

ANALYSIS -- ISSUE 1

OWCP initially accepted that on July 8, 2000 appellant sustained a lumbar sprain when he sat down in a straight-back chair on that date. Appellant's claim was later accepted for an aggravation of lumbar disc displacement. By decision dated August 20, 2012, OWCP terminated appellant's wage-loss compensation and medical benefits effective August 25, 2012 based on the second opinion reports of Dr. Heist, a Board-certified orthopedic surgeon serving as an OWCP referral physician. Dr. Heist found that appellant had no continuing residuals or disability related to the accepted July 8, 2000 work conditions.

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 Board finds that the weight of the medical evidence with respect to this termination matter is represented by the thorough, well-rationalized opinion of Dr. Heist. The reports of Dr. Heist establish that appellant had no residuals of his July 8, 2000 employment injury after August 25, 2012.

In an April 25, 2012 report, Dr. Heist discussed his review of the medical records and detailed his findings on physical examination. He concluded that there was no medical evidence of a condition causally related to the July 8, 2000 work injury. Dr. Heist indicated that there was no basis for restrictions due to the July 8, 2000 work injury as there were no objective findings supportive of continuing disability. He diagnosed chronic mid-lumbar sprain and noted that his clinical examination of the lumbar spine documented a restriction in the last 10 degrees of motion which he attributed to the underlying degenerative spinal disease. Dr. Heist stated, "There are no medical findings that the conditions causally related to the employment injury (sitting in a straight-backed chair) are still active. There are no objective findings related to the injury. There is no current disability." In his July 21, 2012 addendum report, Dr. Heist opined that there was no objective evidence that appellant's condition was causally related to the July 8, 2000 work injury or that there was a work-related condition that continued to be active.

The Board has carefully reviewed the opinion of Dr. Heist and finds that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Heist provided a thorough factual and medical history and accurately summarized the relevant medical evidence.⁸ Dr. Heist provided medical rationale for his opinion by explaining that there were no objective signs of the July 8, 2000 work injury and that appellant's continuing back problems were due to the underlying degenerative condition.

Before OWCP and on appeal, counsel argued that the reports of appellant's attending physicians establish that appellant continues to have disabling residuals of the July 8, 2000 work injury or at least create a conflict in medical opinion with Dr. Heist. The Board notes that, although some of these reports posit that appellant continues to have residuals of the July 8, 2000 work injury, the physicians did not provide sufficient rationalized opinion on causal relationship. For example, in April 10, 24 and 30, 2013 reports, Dr. Alario, an attending Board-certified internist, noted that appellant continued to have residuals of the July 8, 2013 work injury. However, he did not provide adequate explanation for his conclusion. In an April 12, 2013 report, Dr. Oppenheimer indicated that appellant's neck condition was aggravated by his weight-bearing work duties, but it has not been accepted that appellant sustained a neck injury on July 8, 2000. The record does not otherwise establish the existence of such a work injury.

LEGAL PRECEDENT -- ISSUE 2

Section 8128 of FECA provides that the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.⁹ The Board has upheld OWCP's authority to reopen a claim at any time on its own motion under section 8128 of FECA and, where supported by the evidence, set aside or modify a prior decision and

⁸ See *Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

⁹ 5 U.S.C. § 8128.

issue a new decision.¹⁰ The Board has noted, however, that the power to annul an award is not an arbitrary one and that an award for compensation can only be set aside in the manner provided by the compensation statute.¹¹

Workers' compensation authorities generally recognize that compensation awards may be corrected, in the discretion of the compensation agency and in conformity with statutory provision, where there is good cause for so doing, such as mistake or fraud. It is well established that, once OWCP accepts a claim, it has the burden of justifying the termination or modification of compensation benefits. This holds true where, as here, OWCP later decides that it erroneously accepted a claim. In establishing that its prior acceptance was erroneous, OWCP is required to provide a clear explanation of the rationale for rescission.¹²

ANALYSIS -- ISSUE 2

In an October 31, 2013 decision, issued in connection with appellant's October 19, 1994 right wrist injury, OWCP affirmed its October 19, 2012 decision. In that decision, it rescinded its February 16, 2012 acceptance of appellant's claim for a recurrence of disability on April 19, 2010 because the acceptance had been made under the wrong claim file. The Board finds that OWCP adequately explained the basis for its rescission action and met its burden of proof. OWCP explained that the rescission was due to the fact that the initial acceptance had been made under the wrong claim file. Appellant was sent home when no work was available in connection with his limited-duty work necessitated by his July 8, 2000 back injury. Therefore, it was improper to accept the recurrence claim under the file for appellant's October 19, 1994 right wrist injury.¹³

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 August 25, 2012 on the grounds that he had no residuals of his July 8, 2000 work injury after that date. The Board further finds that OWCP properly rescinded its acceptance of appellant's claim for a recurrence of disability on April 10, 2010 due to his accepted right wrist condition.

¹⁰ *John W. Graves*, 52 ECAB 160, 161 (2000).

¹¹ *See* 20 C.F.R. § 10.610.

¹² *John W. Graves*, *supra* note 10.

¹³ It should be noted that, in an October 18, 2012 decision issued in connection with his July 8, 2000 back injury, OWCP advised appellant that it had accepted his claim that he sustained a recurrence of disability on April 19, 2010.

ORDER

IT IS HEREBY ORDERED THAT the January 22, 2014 and October 31, 2013 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 18, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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