United States Department of Labor
Employees' Compensation Appeals Board

D.J., Appellant	)	
and	)	**Docket No. 13-1365**
	)	**Issued: January 24, 2014**
DEPARTMENT OF JUSTICE, BUREAU OF PRISONS, Coleman, FL, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 20, 2013 appellant, through his attorney, filed a timely appeal from an April 18, 2013 decision of the Office of Workers' Compensation Programs (OWCP), which affirmed the termination of his compensation benefits. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUES

The issues are whether: (1) OWCP met its burden of proof to terminate appellant's compensation benefits for his accepted injury effective February 29, 2012; and (2) appellant established that he had any continuing disability or residuals of his accepted conditions after February 29, 2012.

[1] 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On March 7, 2008 appellant, then a 33-year-old correctional officer, felt a "pop" in his back while walking down stairs at work. OWCP accepted the claim for lumbar subluxation, lumbosacral strain/sprain and left sacroiliac sprain. Appellant stopped work on May 25, 2008 and did not return.

Appellant was treated by Dr. Scott H. Hensley, a chiropractor, beginning April 4, 2008. Dr. Hensley noted an x-ray dated March 12, 2008 revealed a slight loss of disc spacing at L5-S1 with mild levorotatory scoliosis. He diagnosed lumbar subluxation, lumbosacral strain and sprain and left sacroiliac sprain and opined that appellant's condition was causally related to the March 7, 2008 work injury. Dr. Hensley opined that appellant was totally disabled. A May 1, 2008 magnetic resonance imaging (MRI) scan of the lumbar spine revealed straightening of normal lumbar lordosis and mild degenerative changes with no evidence for significant spinal canal stenosis or neural foraminal stenosis. Appellant was treated by Dr. Robert N. Ulseth, a Board-certified orthopedic surgeon, from October 20 to 31, 2008 for a low back injury sustained on March 7, 2008. Dr. Ulseth diagnosed lumbar strain and sprain and recommended a lumbar epidural injection that was performed on October 31, 2008. An MRI scan of the thoracic spine dated November 21, 2008 revealed no abnormalities.

In 2009, OWCP referred appellant to a second opinion physician and also to an impartial medical examiner. On October 30, 2009 it accepted left S1 sacroiliitis.

Appellant continued to be treated by Dr. Ulseth for persistent back pain. Dr. Ulseth noted that appellant was obese and that he needed to lose about 80 pounds. A February 16, 2010, functional capacity evaluation revealed that appellant was able to perform sedentary work. Appellant was also treated by Dr. Hensley on November 10, 2009 and October 29, 2010. Dr. Hensley diagnosed subluxation of C7-T1, T4, 5, 6, L5 and S1 and the right sacroiliac joint causing L5-S1 strain complicated by lumbar disc disease and opined that appellant's ongoing disease was the result of muscular and ligamentous instability caused by the March 7, 2008 work injury.

On November 5, 2010 OWCP referred appellant to Dr. William Dinenberg, a Board-certified orthopedic surgeon, for a second opinion. In a November 26, 2010 report, Dr. Dinenberg noted that examination revealed tenderness over the left and right lumbar spine and S1 joints, severe back pain bilaterally with straight leg raises, positive Faber test bilaterally, and decreased sensation of the iliotibial band bilaterally. He diagnosed chronic lumbosacral sprain/strain and sacroiliac sprain and strain. Dr. Dinenberg opined that appellant's lumbosacral sprain and S1 joint sprain were due to the March 7, 2008 work injury, although the exact mechanism of injury was unclear. He found no evidence of lumbar subluxation but opined that appellant continued to have residuals of his injury and that it was unclear why he failed conservative treatment. Dr. Dinenberg found that appellant's current disability was related to the March 7, 2008 accepted conditions of lumbosacral sprain and sacroiliac strain. He advised that appellant was not capable of performing his regular duties as a correctional officer but could work full time with primarily sedentary duties with lifting restrictions.

On April 11, 2011 OWCP requested that Dr. Dinenberg clarify how walking up a step caused chronic lumbar strain and sacroiliac sprain and provide additional rationale for limiting appellant to sedentary work. In an April 18, 2011 supplemental report, Dr. Dinenberg noted that it was unclear how walking up steps caused appellant's chronic lumbar strain and sacroiliac strain as this would not typically involve enough force to cause such injury. He advised that appellant was limited to sedentary duties based on his subjective pain complaints, which included pain on palpation of the lumbar spine, a positive Faber test and pain on straight leg raising.

Appellant submitted reports from Dr. Ulseth dated January 4 to June 7, 2011. Dr. Ulseth noted that appellant had underlying depression and obesity. On March 31, 2011 he diagnosed chronic low back pain related to appellant's work injury. Dr. Ulseth concurred with the March 2010 functional capacity evaluation, which revealed appellant could perform sedentary duties. On April 26, 2011 Dr. Hensley diagnosed subluxation of C7-T1, L5-S1 strain complicated by lumbar disc disease.

In a June 22, 2011 memorandum, OWCP noted that Dr. Dinenberg's initial report was speculative and required clarification. It determined that his April 18, 2011 supplemental report did also not provide a reasoned medical opinion addressing the nature of appellant's injury and why he was limited to sedentary work.

On June 21, 2011 OWCP referred appellant for a second opinion to Dr. Jonathan Black, a Board-certified orthopedic surgeon. In a July 20, 2011 report, Dr. Black noted examining appellant and reviewing his records. He noted a history of appellant's condition. Dr. Black noted an essentially normal physical examination with hypersensitivity and exaggerated pain response with flexion and extension. There was no weakness or sensory deficit and normal motor strength in the both lower extremities. Deep tendon reflexes were equal and symmetric in the legs, appellant had normal gait and straight leg raises were normal. He demonstrated pain response to nonnoxious stimuli. An MRI scan of the lumbar spine revealed mild degenerative changes with no evidence of spinal subluxation. Appellant noted that there was no evidence of left S1 joint sprain or lumbar sprain which were resolved and advised that the continued pain was related to the lumbar degenerative disease noted on the MRI scan. Dr. Black opined that appellant did not have residuals of his work injury as his examination was inconclusive with exaggerated pain response. He opined that appellant did not have ongoing disability due to his work injury and did not believe his current disability was connected to the accepted back injury. Dr. Black noted that appellant's subjective complaints were out of proportion with objective medical findings and found him to be neurologically intact. He noted that appellant was at maximum medical improvement and in a work capacity evaluation advised that he could return to work as a correctional officer without restrictions due to his work injury. Dr. Black noted that any residual back discomfort was due to preexisting degenerative disease as noted on the MRI scan.

Appellant continued treatment with Dr. Ulseth from June 28 to September 13, 2011 for chronic lumbago. Dr. Ulseth noted changing appellant's pain medication and that he had lost weight. In reports from Dr. Hensley dated July 22 and August 13, 2011, he noted that appellant's ongoing low back pain and diagnosed acute L5-S1 symptoms.

OWCP found that a conflict of medical opinion arose between Dr. Ulseth, who indicated that appellant sustained residuals of his work-related injuries and could return to sedentary work and Dr. Black, who determined that appellant's accepted conditions had resolved and he could return to work without restrictions.

On September 16, 2011 OWCP referred appellant to Dr. Craig R. Bennett, a Board-certified orthopedic surgeon. In an October 17, 2011 report, Dr. Bennett reviewed the record, including the history of appellant's work injury and medical treatment. Examination revealed normal gait, limited cervical and lumbar range of motion, negative Spurling and Waddell signs and no pain on palpation in the lower lumbar area. Motor examination of the upper and lower extremities was normal as was sensory examination and reflexes bilaterally. Lumbar x-rays revealed mild age appropriate lumbar spondylosis, no significant scoliosis, no instability and no spondylolisthesis. Dr. Bennett diagnosed lumbar sprain syndrome. He advised that appellant had no physical limitations resulting from the work-related injuries. Dr. Bennett noted that appellant's back injury occurred more than three and a half years prior with no significant objective findings on clinical examination or x-rays. Therefore, appellant had no recurrent physical limitations resulting from his work-related disability. Dr. Bennett advised that appellant complained of chronic pain but his subjective findings were out of proportion to the objective findings. He noted no objective findings on clinical examination as appellant's reflexes and neurological examination were intact and x-rays were normal. Dr. Bennett found that appellant did not have a spinal subluxation based on radiographic diagnosis and there was no evidence of spondylosis. He found that appellant had no residual from his work injury. Dr. Bennett stated that appellant could return to his full duties as a correctional officer in an unrestricted capacity based on the mechanism of injury and the fact that there were no objective findings on MRI scan or plain films. He recommended a work-hardening program before returning to work.

Appellant submitted a November 9, 2011 report from Dr. Hensley, who performed supportive chiropractic treatment for low back pain relating to the March 7, 2008 work injury. On November 10, 2011 Dr. Ulseth noted no change in appellant's examination and diagnosed lumbago and thoracic or lumbosacral neuritis or radiculitis.

On January 9, 2012 OWCP issued a notice of proposed termination of compensation and medical benefits based on Dr. Bennett's report.

Appellant submitted treatment notes from Dr. Hensley dated November 9, 2011 to January 9, 2012. On January 5, 2012 he had palliative treatment of low back pain relating to the March 7, 2008 work injury. A January 10, 2012 report from Dr. Ulseth noted treating appellant for middle and lower back pain. He noted no change in physical examination and diagnosed lumbago and thoracic or lumbosacral neuritis or radiculitis.

In a February 24, 2012 decision, OWCP terminated appellant's wage-loss and medical benefits effective February 29, 2012, based on Dr. Bennett's opinion as the impartial medical referee.

On March 6, 2012 appellant requested an oral hearing, which was held on June 1, 2012. He submitted reports from Dr. Anuj Sharma, an osteopath specializing in pain medicine, dated February 9 and March 1, 2012. Dr. Sharma noted a history of the March 7, 2008 injury and

diagnosed status post workers' compensation injury, thoracolumbar strain and L4-5 and L5-S1 disc osteophyte complex. He noted findings of labored gait, restricted range of motion of the lumbar spine, tissue tightness at L4-5 and L5-S1, intact motor strength and sensation with symmetric reflexes. Reports from Dr. Hensley dated January 27 to March 8, 2012, listed ongoing treatment.

In a June 25, 2012 report, Dr. Bennett treated appellant for low back pain and bilateral leg pain. He noted findings of negative straight leg testing bilaterally, negative Waddell's test, no tenderness upon palpation of the buttocks or trochanter, gait was normal, motor strength was normal and reflexes were abnormal at the biceps, brachioradialis and triceps. Dr. Bennett opined that appellant had significant disc degeneration that affected his pain and recommended lumbar facet injections.

In a decision dated July 23, 2012, an OWCP hearing representative affirmed the February 24, 2012 decision.

On August 30, 2012 appellant requested reconsideration. He submitted a June 25, 2012 report from Dr. Bennett, previously of record and a laboratory report.

In a decision dated April 18, 2013, OWCP denied modification of the July 23, 2012 decision.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation benefits.[2] 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.[3] 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.[4]

ANALYSIS -- ISSUE 1

OWCP accepted appellant's claim for work-related lumbar subluxation, lumbosacral strain/sprain, left sacroiliac sprain and left S1 sacroiliitis. Appellant stopped work on May 25, 2008 and did not return.

OWCP determined that a conflict in medical opinion arose between appellant's attending physician, Dr. Ulseth, who found that appellant had residuals of his accepted injuries and was disabled from work. Dr. Black an OWCP referral physician, who determined that appellant's

[2] *Gewin C. Hawkins*, 52 ECAB 242 (2001); *Alice J. Tysinger*, 51 ECAB 638 (2000).

[3] *Mary A. Lowe*, 52 ECAB 223 (2001).

[4] *Id.; Leonard M. Burger*, 51 ECAB 369 (2000).

accepted conditions had resolved and he could return to work without restrictions. OWCP referred appellant to Dr. Bennett to resolve the conflict.

The Board finds that the opinion of Dr. Bennett is sufficiently well rationalized and based upon a proper factual background such that it is entitled to special weight and establishes that residuals of appellant's work-related conditions have ceased. Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.[5]

In an October 17, 2011 report, Dr. Bennett reviewed appellant's history, reported findings and noted that appellant exhibited no objective complaints or findings due to the accepted conditions. He opined that the physical examination was essentially normal with no pain on palpation in the lower lumbar area, normal upper and lower extremity motor examination and intact sensory examination and reflexes. Dr. Bennett noted x-rays of the lumbar spine revealed mild age appropriate lumbar spondylosis, no significant scoliosis, no instability and no spondylolisthesis. He diagnosed lumbar sprain syndrome. Dr. Bennett opined that appellant did not have residuals of the accepted work-related conditions of lumbar subluxation, lumbosacral strain/sprain, left sacroiliac sprain or left S1 sacroiliitis. He noted that appellant's back injury occurred more than three and a half years ago and he has no significant objective findings on clinical examination or x-rays. Dr. Bennett noted that appellant had no physical limitations resulting from the work-related injuries. He advised that appellant complained of chronic pain; however, his subjective findings were out of proportion to his objective findings. Dr. Bennett opined that appellant did not have a subluxation based on radiographic diagnosis and there was no evidence of spondylosis. He determined that appellant had no residuals from his work injury and could return to his full duties as a correctional officer based on the mechanism of injury and the fact that there were no objective findings.

The Board finds that Dr. Bennett had full knowledge of the relevant facts and evaluated the course of appellant's condition. Dr. Bennett is a specialist in the appropriate field. At the time wage-loss benefits were terminated he clearly opined that appellant had no work-related reason for disability. Dr. Bennett's opinion as set forth in his report of October 17, 2011 is probative evidence and reliable. The Board finds that his opinion constitutes the weight of the medical evidence and is sufficient to justify OWCP's termination of wage-loss and medical benefits for the accepted conditions.

After Dr. Bennett's examination appellant submitted reports from Dr. Hensley dated November 9, 2011 to March 8, 2012, who treated appellant for low back pain relating to the March 7, 2008 work injury. Also submitted were reports from Dr. Ulseth dated November 10, 2011 and January 10, 2012, who treated appellant in follow up for middle and lower back pain. He noted no change in his physical examination and diagnosed lumbago and thoracic or lumbosacral neuritis or radiculitis. However, Drs. Hensley and Ulseth did not specifically explain how any accepted conditions remained symptomatic and caused continuing disability. The Board has found that vague and unrationalized medical opinions on causal relationship have

[5] *Solomon Polen*, 51 ECAB 341 (2000). *See* 5 U.S.C. § 8123(a).

little probative value.[6] The Board also notes that OWCP did not accept lumbosacral neuritis or radiculitis as being work related.[7] Additionally, Dr. Ulseth's reports are similar to his prior reports and are insufficient to overcome that of Dr. Bennett or to create a new medical conflict.[8]

Appellant submitted reports from Dr. Sharma dated February 9 and March 1, 2012, who noted a history of injury on March 7, 2008 and positive findings upon examination. Dr. Sharma diagnosed status post workers' compensation injury on March 7, 2008, thoracolumbar strain and MRI scan of the lumbar spine L4-5 and L5-S1 disc osteophyte complex. However, his opinion is of limited probative value as he did not provide medical reasoning to explain why any diagnosed condition was due to the March 7, 2008 work injury.

Appellant submitted a June 25, 2012, report from Dr. Bennett who, subsequent to his impartial examination, saw appellant for low back and bilateral leg pain. Dr. Bennett noted an essentially normal physical examination and opined that appellant had significant disc degeneration causing his pain and recommended lumbar facet injections. However, he did not indicate that he changed his prior opinion that appellant's work-related conditions had resolved. Rather, Dr. Bennett attributed appellant's pain to a degenerative disc condition, not accepted by OWCP as work related, which was consistent with his previous report.

Consequently, the weight of the medical evidence supports OWCP's termination of appellant's compensation benefits.

LEGAL PRECEDENT -- ISSUE 2

As OWCP met its burden of proof to terminate appellant's compensation benefits, the burden shifted to him to establish that he had continuing disability causally related to his accepted employment injury.[9] To establish causal relationship between the claimed disability and the employment injury, appellant must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship.[10]

[6] *Franklin D. Haislah,* 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett,* 52 ECAB 332 (2001).

[7] *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).

[8] *See Howard Y. Miyashiro,* 43 ECAB 1101, 1115 (1992); *Dorothy Sidwell,* 41 ECAB 857 (1990) (submitting a report from a physician who was on one side of a medical conflict that an impartial specialist resolved is, generally, insufficient to overcome the weight accorded to the report of the impartial specialist or to create a new conflict). Dr. Ulseth's reports do not contain new findings or rationale upon which a new conflict might be based.

[9] *See Joseph A. Brown, Jr.,* 55 ECAB 542 (2004); *Manuel Gill,* 52 ECAB 282 (2001).

[10] *Daniel F. O'Donnell, Jr.*, 54 ECAB 456 (2003).

ANALYSIS -- ISSUE 2

The Board finds that appellant has not established that he has any continuing residuals of his work-related lumbar subluxation, lumbosacral strain/sprain and left sacroiliac sprain and expanded his claim to include left S1 sacroiliitis, on or after February 29, 2012.

After the termination of benefits on February 29, 2012 appellant submitted a June 25, 2012 report from Dr. Bennett, previously of record. As noted above, Dr. Bennett noted an essentially normal physical examination and diagnosed disc degeneration causing appellant's pain symptoms. He did not clearly indicate that appellant had any continuing condition that was causally related to the March 7, 2008 work injury; rather, he attributed appellant's pain to significant disc degeneration, a condition not accepted by OWCP as work related. Thus, Dr. Bennett's June 25, 2012 report does not establish a continuing work-related condition and is not sufficient to meet appellant's burden of proof.

Appellant also submitted a laboratory report but this evidence was not accompanied by a physician's explanation regarding how any medical condition was due to appellant's March 7, 2008 work injury.

None of the reports submitted by appellant after the termination of benefits included a rationalized opinion regarding the causal relationship between his current condition and his accepted work-related conditions. Consequently, appellant did not establish that he had any employment-related condition or disability after February 29, 2012.

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 has met its burden of proof to terminate benefits effective February 29, 2012 and that appellant failed to establish that he had any continuing disability due to his accepted condition after February 29, 2012.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 18, 2013 is affirmed.

Issued: January 24, 2014
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