

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

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**J.T., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Redmond, WA, Employer**

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**Docket No. 14-72  
Issued: July 17, 2014**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

Oral Argument June 4, 2014

**DECISION AND ORDER**

Before:

PATRICIA HOWARD FITZGERALD, Acting Chief Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On October 7, 2013 appellant filed a timely appeal from May 17 and September 6, 2013 merit decisions of the Office of Workers' Compensation Programs (OWCP) terminating his compensation benefits. 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 claim.

**ISSUE**

The issue is whether OWCP properly terminated appellant's compensation benefits effective May 17, 2013.

Appellant argued on appeal, *inter alia*, that referral to the impartial medical examiner was improper as there was no dispute between his physician and the second opinion physician; that there is no medical evidence as to how and when the aggravation of his migraine headaches resolved; that his underlying medical condition has not resolved; and that OWCP ignored their own accepted diagnosis.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

This case has been previously before the Board. On July 24, 2008 appellant, then a 47-year-old mail processor, alleged that, on June 23, 2008, he experienced a severe and ongoing sense of dizziness and loss of balance due to photosensitivity from exposure to bright lighting in his workplace. He noted that he developed a migraine headache shortly thereafter in the hospital. OWCP denied appellant's claim and his request for reconsideration, but on August 19, 2010, the Board remanded the case for OWCP to review the case on the merits. The facts as set forth in the Board's prior decision are hereby incorporated by reference.<sup>2</sup>

Subsequent to the Board's remand of the case, on December 13, 2010, OWCP accepted appellant's claim for temporary aggravation of migraine headache.

In a January 3, 2011 report, Dr. Janine R. Cooley, appellant's treating Board-certified family practitioner, noted that appellant had active problems with allergic rhinitis, anal fissure, depression, diverticulitis of colon, hemochromatosis, irritable bowel syndrome, migraine headache and vertigo.

By letter dated January 15, 2011, appellant asked that additional diagnoses codes be added so that treatment of vertigo, dizziness, sensitivity to bright light and depression will be reimbursed. In a January 21, 2011 CA-110 note, OWCP indicated that temporary vertigo "will be added today as an accepted condition because it was diagnosed in the medical reports."

On October 19, 2011 OWCP terminated appellant's compensation and medical benefits effective October 23, 2011. However, by decision dated March 30, 2012, an OWCP hearing representative found that OWCP had not met its burden to terminate his benefits. The case was returned to OWCP for a rationalized medical opinion showing whether the accepted temporary aggravation of the preexisting migraine headaches had ceased, to be followed by a *de novo* decision.

OWCP referred appellant to Dr. Lewis B. Almaraz, a Board-certified neurologist, for a second opinion. In his May 22, 2012 opinion, Dr. Almaraz listed appellant's condition as an administratively accepted condition of migraine headache. He opined that the accepted temporary aggravation of preexisting migraine headaches ceased when appellant discontinued work in 2009. Dr. Almaraz noted that appellant's primary underlying headache disorder has continued, which represented the natural history of his preexisting condition. He noted that there was no medical evidence of such material worsening that appellant could no longer work in an environment of bright light. Dr. Almaraz explained that, although appellant's head pain is worse when exposed to fluorescent lighting or other bright lights, this does not represent a material worsening; it was just part of his headache syndrome. He did recommend that appellant not be exposed to fluorescent bright lighting.

In June 25, 2012 and May 7, 2013 progress notes, Dr. Nancy L. Linscott, appellant's treating Board-certified family practitioner, listed his active problems, including allergic rhinitis, depression, migraine headache and vertigo. She noted generalized headache pain,

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<sup>2</sup> Docket No. 10-270 (issued August 16, 2010).

chronic/recurring, worsening with exposure to fluorescent lighting and noted that the difficulty functioning at work started in 2009. Dr. Linscott assessed migraine headache and vertigo and listed work restrictions of no fluorescent lighting exposure.

OWCP noted in a July 25, 2012 “Statement of Conflict” that the second opinion physician, Dr. Almaraz, stated that appellant’s temporary aggravation of preexisting migraine headaches had ceased when he discontinued work in 2009, but that the attending physician, Dr. Linscott, stated that appellant continued to have ongoing migraine headaches and vertigo and that no florescent lighting exposure was allowed. As it found that a conflict existed between appellant’s treating physician, Dr. Linscott, and the second opinion examiner, Dr. Almaraz, regarding whether appellant’s current medical restrictions were related to the date of injury, on August 15, 2012 OWCP referred appellant to Dr. Linda Wray, a Board-certified neurologist, for an impartial medical examination.

In an October 3, 2012 report, Dr. Wray noted diagnoses of migraine with aura, preexisting and unrelated to the industrial claim of June 23, 2008; and normal neurological examination. She opined that the accepted temporary aggravation of preexisting migraine disorders by lighting in the workplace clearly ceased when appellant discontinued work in 2009. Dr. Wray stated that it was unclear why other accommodations such as wearing tinted eyewear or moving into a different work setting were not explored instead of putting appellant on medical disability. She noted no workplace restrictions based on this claim, noting that his migraine disorder is a preexisting nonindustrially-related condition. Dr. Wray also stated that part of the management of chronic migraines includes avoidance of consistent triggers, but that the triggers, while they may provide individual attacks of migraines, do not in themselves change the long term natural history or behavior of this nonindustrial disorder. She agreed that it would be better for appellant to avoid bright fluorescent lighting on a long-term basis, but indicated that this would be related to his preexisting or chronic migraine disorder and not to any specific industrial incident or injury on June 23, 2008.

On April 15, 2013 OWCP issued a notice of proposed termination as the employment-related temporary aggravation of the preexisting condition of migraine headaches had ceased or is no longer related to the accepted employment injury. It noted that because appellant was no longer exposed to work factors that caused the temporary aggravation, his current condition is related to the natural progression of his preexisting condition.

By decision dated May 17, 2013, OWCP terminated appellant’s compensation benefits effective that date.

In a letter to appellant dated June 12, 2013, OWCP indicated that the diagnosis of temporary vertigo discussed in a January 21, 2011 note was not a formal acceptance and that, if this condition was added, then it was in error. It noted that, as there was never a formal acceptance of the condition, there is no need to rescind an acceptance.

By decision dated September 6, 2013, an OWCP hearing representative affirmed the May 17, 2013 decision terminating benefits.

## LEGAL PRECEDENT

Once OWCP has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.<sup>3</sup> Having determined that an employee has a disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.<sup>4</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.<sup>5</sup> To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which requires further medical treatment.<sup>6</sup>

Section 8123(a) of FECA provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.<sup>7</sup> When 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 on a proper factual background, must be given special weight.<sup>8</sup>

## ANALYSIS

OWCP accepted appellant's claim for temporary aggravation of migraine headache. Appellant's physicians, Dr. Cooley and Dr. Linscott noted continued issues with migraine headaches and vertigo, among other medical conditions. Dr. Linscott noted that appellant's recurring headache pain worsened with exposure to fluorescent lighting and noted that he had difficulty functioning at work starting in 2009. She listed work restrictions of no fluorescent lighting exposure. The second opinion physician, Dr. Almaraz, stated that the temporary aggravation of appellant's preexisting migraine headaches ceased when he discontinued work in 2009. He noted that appellant's primary underlying headache disorder had continued, which represented the natural history of his preexisting condition. Dr. Almaraz recommended that appellant not be exposed to fluorescent bright lighting, but explained that this does not represent a material worsening, just a continuation of his preexisting headache syndrome.

The Board finds that OWCP properly found that there was a conflict between the opinion of appellant's treating physician, Dr. Linscott, and the second opinion physician, Dr. Almaraz regarding whether appellant had any residuals from the accepted injury of temporary aggravation

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<sup>3</sup> *Bernadine P. Taylor*, 54 ECAB 342 (2003).

<sup>4</sup> *Id.*

<sup>5</sup> *Roger G. Payne*, 55 ECAB 535 (2004).

<sup>6</sup> *Pamela K. Guesford*, 53 ECAB 726 (2002).

<sup>7</sup> 5 U.S.C. § 8123(a); see *Geraldine Foster*, 54 ECAB 435 (2003).

<sup>8</sup> See also *M.C.*, Docket No. 14-283 (issued April 28, 2014); see *Manuel Gill*, 52 ECAB 282 (2001).

of migraine headache. As there was a conflict in the medical opinions between appellant's treating physician and the second opinion physician with regard to whether appellant had any continuing residuals from the accepted employment condition, OWCP properly referred the case to an impartial medical examiner to resolve the conflict,<sup>9</sup> pursuant to 5 U.S.C. § 8123(a).

In the October 3, 2012 report, the impartial medical examiner, Dr. Wray, diagnosed appellant with migraine with aura, preexisting and unrelated to the industrial claim of June 23, 2008. She opined that the accepted temporary aggravation of his preexisting migraine disorders by lighting in the workplace clearly ceased when appellant discontinued work in 2009. Dr. Wray further opined that no workplace restrictions were based on this claim, noting that appellant's migraine disorder is a preexisting condition. Although she agreed that it would be better for him to avoid bright fluorescent lighting on a long-term basis, she specifically indicated that this restriction would be related to his preexisting or chronic migraine disorder and not to any specific industrial incident or injury of June 23, 2008.

The Board finds that OWCP properly terminated appellant's compensation and medical benefits based on the well-rationalized opinion of Dr. Wray, the impartial medical examiner, who noted that as he had no workplace exposure to fluorescent lighting since 2009, any current migraine headaches would be related to his underlying condition. When an aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after aggravation has ceased, even if the employee is medically disqualified from continuing employment due to the underlying condition.<sup>10</sup> Appellant's argument that because he has permanent restrictions the aggravation was permanent is not supported by the medical evidence. The fact that he still suffered from migraine headaches due to his underlying condition or the fact that he had medical restrictions limiting his exposure to fluorescent lighting does not mean that he had a continuation of the accepted condition. OWCP properly gave special weight to the well-rationalized opinion of the impartial medical examiner, Dr. Wray and terminated appellant's medical and compensation benefits due to the fact that the employment-related aggravation of his migraine headaches had ceased.<sup>11</sup>

Appellant argued in his appeal papers and at oral argument that OWCP ignored an accepted diagnosis of vertigo. However, OWCP never accepted his claim for vertigo. The January 21, 2011 note was an internal OWCP note indicating that temporary vertigo would be accepted, but there never was a final decision indicating that OWCP accepted this condition.

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<sup>9</sup> S.S., Docket No. 13-1183 (issued February 4, 2014).

<sup>10</sup> See also *D.G.*, Docket No. 09-660 (issued November 24, 2009); see *Raymond W. Behrens*, 50 ECAB 221 (1999).

<sup>11</sup> *S.N.*, Docket No. 08-1869 (issued May 5, 2009).

For these reasons, OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective May 17, 2013.<sup>12</sup>

**CONCLUSION**

The Board finds that OWCP properly terminated appellant's compensation benefits effective May 17, 2013.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated September 6 and May 17, 2013 are affirmed.

Issued: July 17, 2014  
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>12</sup> The hearing representative correctly noted that the fear of reinjury or possible recurrence of disability is not the basis for payment of compensation. *See S.N.*, Docket No. 13-2069 (issued February 21, 2014); *see also Mary A. Geary*, 43 ECAB 300 (1991). However, the Board notes that in the instant case, the issue is not fear of future injury, but rather whether appellant had any continuing work restrictions advising him to avoid fluorescent lighting at work due to the accepted employment injury.