

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

E.C., Appellant)

and)

**DEPARTMENT OF THE NAVY, NAVAL AIR
STATION, Kingsville, TX, Employer**)

**Docket No. 13-2144
Issued: March 12, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 25, 2013 appellant filed a timely appeal from a September 9, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) terminating his compensation benefits. 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.

ISSUE

The issue is whether OWCP properly terminated appellant's compensation benefits effective September 22, 2013 on the grounds that he had no further disability causally related to his May 20, 2002 employment injury.

FACTUAL HISTORY

On May 20, 2002 appellant, then a 45-year-old heavy equipment mechanic, sustained injury to his back and lower left side in the performance of duty. OWCP accepted the claim for

¹ 5 U.S.C. § 8101 *et seq.*

lumbar strain and displacement of a lumbar intervertebral disc without myelopathy. It paid appellant compensation for total disability beginning December 18, 2002.

By decision dated September 13, 2004, OWCP reduced appellant's compensation finding that his actual earnings as an aircraft overhaul trades helper effective June 1, 2004 fairly and reasonably represented his wage-earning capacity.² In a decision dated March 9, 2005, it denied modification of its September 13, 2004 decision.

On May 16, 2012 Dr. Jairo A. Puentes, an attending Board-certified physiatrist, diagnosed chronic low back pain, lumbar muscle ligamentous strain and lumbar myofascitis. He noted that appellant was currently employed and could "perform all the duties required without restriction." In duty status reports dated May 16, August 20 and November 20, 2012 and March 20 and June 24, 2013, Dr. Puentes found that appellant could work full time without limitations.

By letter dated June 27, 2013, OWCP requested that Dr. Puentes review the position description for a heavy equipment mechanic and indicate whether appellant could perform the duties of that position. It further requested that he complete a work restriction evaluation.

In a July 9, 2013 work restriction evaluation, Dr. Puentes found that appellant could work eight hours per day without restrictions. He further indicated by signature on OWCP's June 27, 2013 letter that appellant could work as a heavy equipment mechanic with no limitations.

On July 24, 2013 OWCP advised appellant of its proposed termination of his compensation benefits as the medical evidence established that he had no further employment-related disability. It provided him 30 days to submit evidence or argument in response to the proposed termination.

In a progress report dated August 5, 2013, Dr. Puentes diagnosed low back pain, muscle ligamentous strain of the lumbar spine and lumbar myofascitis. He opined that appellant was "sufficiently recovered enough to be released to regular duty" and that he could "return to regular work duty as a heavy mechanic operator." In a duty status report dated August 5, 2013, Dr. Puentes found that appellant could work eight hours of his usual employment.

In an undated letter received by OWCP on August 12, 2013, appellant related that he continued to experience pain in his low back which worsened with activity and lessened with rest and medication. He requested a second opinion on his low back condition.

By decision dated September 9, 2013, OWCP terminated appellant's compensation effective September 22, 2013 after finding that the opinion of Dr. Puentes represented the weight of the evidence and established that he had no further disability due to his May 20, 2002 employment injury.

² In a decision dated September 3, 2004, OWCP found that appellant received an overpayment of compensation in the amount of \$674.97 because he received compensation from May 16 to June 12, 2004 after he returned to work on June 1, 2004. It further determined that he was at fault in the creation of the overpayment.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.³ OWCP's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴

ANALYSIS

OWCP accepted that appellant sustained lumbar strain and a displaced lumbar intervertebral disc without myelopathy due to a May 20, 2002 work injury. It paid him compensation for partial disability based on its finding that his actual earnings as an aircraft overhaul trades helper effective July 1, 2004 fairly and reasonably represented his wage-earning capacity.

The Board finds that OWCP properly terminated appellant's compensation based on the opinion of his attending physician, Dr. Puentes. On May 16, 2012 Dr. Puentes diagnosed low back pain, a lumbar ligamentous strain and lumbar myofascitis. In accompanying duty status reports dated May 2012 through June 2013, he found that appellant could work full time with no limitations. In response to OWCP's June 27, 2013 letter, Dr. Puentes reviewed the position of heavy equipment mechanic and found that appellant could perform the full duties of the job. In a report dated August 5, 2013, he diagnosed low back pain, lumbar strain and lumbar myofascitis. Dr. Puentes released appellant to his usual full-time employment and reiterated that he could work as a heavy mechanic operator.

Appellant's attending physician, Dr. Puentes, had a thorough knowledge of appellant's condition. His opinion is, therefore, probative on the issue of whether appellant had any further disability due to his employment injury.⁵ OWCP properly relied upon Dr. Puentes' opinion to terminate appellant's monetary compensation effective September 22, 2013.

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 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that OWCP properly terminated appellant's compensation benefits effective September 22, 2013 on the grounds that he had no further disability causally related to his May 20, 2002 employment injury.

³ *Elaine Sneed*, 56 ECAB 373 (2005); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

⁴ *Gewin C. Hawkins*, 52 ECAB 242 (2001).

⁵ *See C.B.*, Docket No. 10-1623 (issued April 11, 2011); *C.D.*, Docket No. 10-918 (issued October 26, 2010).

ORDER

IT IS HEREBY ORDERED THAT the September 9, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 12, 2014
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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