

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

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H.Y., Appellant )

and )

DEPARTMENT OF AGRICULTURE, ANIMAL )  
& PLANT HEALTH INSPECTION SERVICE, )  
Miami Springs, FL, Employer )

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**Docket No. 14-19**  
**Issued: March 24, 2014**

*Appearances:*  
*Lenin V. Perez, for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
PATRICIA HOWARD FITZGERALD, Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On October 15, 2013 appellant, through his representative, filed a timely appeal from a September 9, 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.

**ISSUES**

The issues are: (1) whether OWCP properly terminated appellant's compensation effective February 20, 2013 on the grounds that he had no further disability causally related to his March 13, 1980 employment injury; and (2) whether it properly terminated his authorization for medical treatment.

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

## **FACTUAL HISTORY**

On March 21, 1980 appellant, then a 33-year-old animal health technician, filed a traumatic injury claim alleging that on March 13, 1980 he injured his right shoulder while reading ear tags on a bull. OWCP accepted the claim for a herniated cervical disc at C6-7 with myelopathy and radiculopathy to the right arm from nerve root damage. Appellant stopped work on March 14, 1980. On April 3, 1980 he underwent a C6-7 hemilaminectomy, foraminotomy and discectomy. Appellant returned to limited-duty employment on July 6, 1980 but stopped work on October 14, 1983 and did not return.<sup>2</sup> OWCP paid him wage-loss compensation for total disability.

By decision dated March 18, 1987, OWCP reduced appellant's compensation effective April 12, 1987 based on its finding that he had the capacity to earn wages as a Cashier 2. In a decision dated October 5, 1987, an OWCP hearing representative affirmed the March 18, 1987 loss of wage-earning capacity determination.<sup>3</sup>

On December 4, 2012 OWCP referred appellant to Dr. Jonathan D. Black, a Board-certified orthopedic surgeon, for a second opinion examination. In a report dated December 18, 2012, Dr. Black discussed appellant's history of injury and resulting medical treatment. On examination of the cervical spine, he found normal cervical alignment, mild tenderness on palpation, full strength and no sensory deficit or weakness. Dr. Black found reduced range of motion for flexion, extension and rotation that did not cause radiculopathy. He determined that there were "no objective findings on clinical and examination to support residuals from the compensable injury as stated in the statement of accepted facts. [Appellant] is completely neurologically intact." Dr. Black further asserted, "There are no objective findings to support disability as a result of the compensable injuries. [Appellant] reports that he has activity-related neck discomfort, which may preclude his regular job as an animal husbandry technician without restrictions but these are subjective complaints only."

On January 9, 2013 OWCP notified appellant of its proposed termination of his compensation and medical benefits as the medical evidence supported that he had no further employment-related disability or residual condition.

In a response dated February 4, 2013, appellant disagreed with the proposed termination of his compensation and asserted that Dr. Black's examination lasted only five minutes. He requested another examination.

By decision dated February 20, 2013, OWCP terminated appellant's compensation and authorization for medical benefits effective February 20, 2013. It found that Dr. Black's opinion represented the weight of the medical evidence and established that he had no further disability or need for medical treatment as a result of his March 13, 1980 work injury.

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<sup>2</sup> On March 5, 1984 appellant underwent an excision of a herniated nucleus pulposus at C5-6 and a hemilaminectomy and foraminotomy at C5-6.

<sup>3</sup> By decision dated November 19, 1988, OWCP denied appellant's request to reopen his case for further review of the merits under 5 U.S.C. § 8128.

On March 4, 2013 appellant requested a telephone hearing before an OWCP hearing representative.

In a report dated April 8, 2013, Dr. Samy F. Bishai, an orthopedic surgeon, discussed appellant's history of a 1980 employment injury and his current complaints of neck pain with radiculopathy into the upper extremities and low back pain with radiculopathy. On examination of the cervical spine, he found "paraspinal muscle spasm of moderate intensity affecting the paraspinal muscles of the cervical region of the spine" and muscle spasm of the trapezius muscles bilaterally. Dr. Bishai further found reduced cervical motion and diminished sensation in some fingers of the hands. He diagnosed cervical and lumbar disc syndrome with bilateral radiculopathy, possible bilateral carpal tunnel syndrome, internal derangement of the left shoulder and status post cervical and lumbar laminectomies. Dr. Bishai requested that appellant provide him with copies of his medical records, "including the work[-]related accident."

In a progress report dated May 8, 2013, Dr. Claude Barosy, who specializes in family medicine, discussed appellant's complaints of neck, low back and shoulder pain. He diagnosed cervical and lumbar disc syndrome with radiculopathy bilaterally, internal derangement of the left shoulder, status post lumbar and cervical laminectomies and to rule out carpal tunnel syndrome. On May 22, 2013 Dr. Barosy indicated that appellant experienced pain radiating into his upper and lower extremities. He provided findings on examination and diagnoses, which included cervical and lumbar disc syndrome with radiculopathy.

At the telephone hearing, held on July 10, 2013, appellant related that Dr. Black only examined him for five minutes and conducted a minimal physical evaluation. The hearing representative suggested that appellant have his attending physician review and discuss the report of the second opinion physician. Appellant's representative asserted that Dr. Black was currently the only physician performing evaluations for OWCP in the entire district.

By decision dated September 9, 2013, an OWCP hearing representative affirmed the February 20, 2013 decision.

On appeal, appellant's representative argues that he has additional diagnoses that should be accepted as related to appellant's work injury. He further asserts that OWCP used Dr. Black excessively as a medical evaluator and that his examination lasted only five minutes and consisted of asking appellant to touch his foot and wiggle his fingers. Appellant's representative argues that the opinions of Dr. Barosy and Dr. Bishai supported that appellant had consequential injuries and that his condition had worsened. He maintains that their reports create a conflict in medical opinion.

### **LEGAL PRECEDENT -- ISSUE 1**

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.<sup>4</sup>

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<sup>4</sup> Elaine Sneed, 56 ECAB 373 (2005); Gloria J. Godfrey, 52 ECAB 486 (2001).

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.<sup>5</sup>

### ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained a herniated disc at C6-7 with myelopathy and right arm radiculopathy due to nerve damage due to a March 13, 1980 employment injury. After experiencing intermittent disability, appellant stopped work on October 14, 1983 and did not return. OWCP paid compensation for total disability until April 12, 1987, when it reduced his compensation based on its finding that he had the capacity to earn wages in the selected position of Cashier 2.

On December 4, 2012 OWCP referred appellant to Dr. Black for a second opinion examination. The Board finds that OWCP met its burden of proof to terminate his compensation through the opinion of Dr. Black, who determined that appellant had no further disability causally related to his accepted employment injury. In his December 18, 2012 report, Dr. Black reviewed the history of injury and listed detailed findings on physical examination. He found full strength and normal alignment with some loss of range of motion with movement with radiculopathy. Dr. Black further determined that appellant had no sensory deficit or weakness on neurological examination. He noted that diagnostic studies revealed possible mild carpal tunnel syndrome on the right. Dr. Black found no objective findings supporting any residuals or disability due to appellant's accepted employment injury. He provided rationale for his opinion by explaining that appellant had a normal neurological examination. Dr. Black noted that appellant experienced neck pain with activity that was unsupported by objective findings. He concluded that appellant could return to his usual employment without limitations. Dr. Black provided a thorough review of the factual and medical background and accurately summarized the relevant medical evidence. Moreover, he provided detailed findings on examination and reached conclusions regarding appellant's condition, which comported with his findings.<sup>6</sup> Consequently, Dr. Black's report represents the weight of the evidence and establishes that appellant has no further employment-related disability.<sup>7</sup>

The remaining evidence of record is insufficient to show that appellant had further disability due to his employment injury. Dr. Bishai evaluated appellant for neck and low back pain with radiculopathy into the extremities and reviewed his history of a 1980 work injury. He diagnosed cervical and lumbar disc syndrome with bilateral radiculopathy, internal derangement of the left shoulder, status post cervical and lumbar laminectomies and possible carpal tunnel syndrome. Dr. Bishai did not, however, specifically discuss the cause of the diagnosed conditions. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.<sup>8</sup>

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<sup>5</sup> *Gewin C. Hawkins*, 52 ECAB 242 (2001).

<sup>6</sup> *See Pamela K. Guesford*, 53 ECAB 727 (2002).

<sup>7</sup> *See F.G.*, Docket No. 13-1676 (issued January 2, 2014); *T.M.*, Docket No. 13-1953 (issued December 11, 2013).

<sup>8</sup> *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *Conard Hightower*, 54 ECAB 796 (2003).

Additionally, Dr. Bishai did not address the relevant issue of whether appellant remained disability as a result of his employment injury.<sup>9</sup>

In progress reports dated May 8 and 22, 2013, Dr. Barosy treated appellant for pain in the neck, low back and shoulder. He diagnosed cervical and lumbar disc syndrome with radiculopathy and internal derangement of the left shoulder. Dr. Barosy did not, however, address causation and thus his reports are of little probative value.<sup>10</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.<sup>11</sup> To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.<sup>12</sup>

### **ANALYSIS -- ISSUE 2**

OWCP met its burden of proof to terminate authorization for medical benefits through the opinion of Dr. Black, who found that appellant had no residuals of his accepted conditions. Dr. Black explained that his neurological examination revealed no residuals of the March 13, 1980 employment injury. His opinion, which is detailed and well rationalized, constitutes the weight of the evidence and establishes that appellant has no further residuals of his accepted employment injury.

On appeal, appellant's representative argues that OWCP should accept more conditions as employment related. He argues that Dr. Barosy and Dr. Bishai found that he had a consequential injury and that his condition had worsened. Appellant's representative maintains that their reports create a conflict in medical opinion. However, where a claimant claims that a condition not accepted or approved by OWCP was due to his employment injury, he bears the burden of proof to establish that the condition is causally related to the employment injury through the submission of rationalized medical evidence.<sup>13</sup> As noted, neither Dr. Barosy nor Dr. Bishai addressed causation and thus their opinions are insufficient to establish a consequential injury, show appellant's condition worsened or to create a conflict in medical opinion with Dr. Black.

Appellant's representative further asserts that OWCP used Dr. Black excessively as a medical evaluator and that his examination lasted only five minutes and included only asking

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<sup>9</sup> *Carol A. Lyles*, 57 ECAB 265 (2005) (whether a particular injury caused an employee disability from employment is a medical issue which must be resolved by competent medical evidence).

<sup>10</sup> *See supra* note 8.

<sup>11</sup> *T.P.*, 58 ECAB 524 (2007); *Pamela K. Guesford*, *supra* note 6.

<sup>12</sup> *Id.*

<sup>13</sup> *JaJa K. Asaramo*, 55 ECAB 200, 204 (2004).

appellant to touch his foot and wiggle his fingers. Dr. Black, however, provided thorough findings on evaluation in his December 18, 2012 report. Appellant has not submitted any evidence establishing his alleged bias by Dr. Black.

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 and authorization for medical treatment effective February 20, 2013 on the grounds that he had no further disability or need for medical treatment causally related to his March 13, 1980 employment injury.

**ORDER**

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

Issued: March 24, 2014  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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