

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

D.E., Appellant)

and)

DEPARTMENT OF TRANSPORTATION,)
FEDERAL AVIATION ADMINISTRATION,)
Renton, WA, Employer)

**Docket No. 14-1632
Issued: November 25, 2014**

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 July 14, 2014 appellant, through counsel, filed a timely appeal from a May 21, 2014 decision of the Office of Workers' Compensation Programs (OWCP) affirming the termination of 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 November 8, 2013 on the grounds that his accepted bilateral wrist contusion, right knee contusion, bilateral shoulder sprains, chest wall contusion, lumbar sprain and cervical sprain had resolved without residuals.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

OWCP accepted that appellant, then a 77-year-old airway transportation systems specialist, sustained a bilateral wrist contusion, right knee contusion, bilateral shoulder sprains, chest wall contusion, lumbar sprain and cervical sprain as a result of being rear-ended in a motor vehicle accident on March 13, 2013. Appellant has not worked since the date of injury.²

Appellant submitted reports dated March 13 through July 29, 2013 from Dr. Usha Raghavan, a Board-certified internist, who diagnosed lumbar strain, neck strain, shoulder strain, knee contusion, wrist contusion, brain injury with concussion and contusion of sternum. Dr. Raghavan opined that appellant was temporarily totally disabled.

OWCP referred appellant for a second opinion evaluation to determine the nature and extent of his employment-related conditions. In a July 31, 2013 report, Dr. Steven M. Ma, a Board-certified orthopedic surgeon, reviewed a statement of accepted facts, history of the injury and medical treatment and conducted a physical examination. Upon examination of appellant's neck, Dr. Ma found no asymmetry, no scars, no spasm and no tenderness to palpation. Appellant was able to bring his chin to his chest, as well as to his left and right shoulders. Examination of both shoulders and upper extremities revealed no obvious atrophy, no swelling, no scars and a negative impingement sign. There was no evidence of any subluxation or dislocation about his shoulders. There was a negative apprehension sign. Appellant had a negative Tinel's sign over the elbows. He was able to go from full extension to making a full fist with all of his fingers. Appellant's Tinel's sign, Phalen's test, Finkelstein's test and Allen's test were all negative. He was able to bend forward and come to within two feet of touching the ground with his fingertips. Appellant's sciatic tension test was negative bilaterally. The right knee lacked 10 degrees of full extension and flexed to 110 degrees of flexion. Lachman's and McMurray's tests were negative. Dr. Ma concluded that appellant's employment-related conditions had resolved without residuals. He opined that appellant had reached maximum medical improvement and released him to sedentary work with restrictions. Dr. Ma noted that the work restrictions were based on appellant's underlying arthritic disease and not to the accepted motor vehicle accident.

By letter dated August 20, 2013, OWCP notified appellant that it proposed to terminate his compensation benefits based on the weight of the medical evidence, as represented by Dr. Ma. It afforded him 30 days to submit additional evidence or argument in disagreement with the proposed action.

Appellant submitted reports dated August 14 through October 2, 2013 from Dr. Raghavan who opined that appellant's conditions were aggravated by the motor vehicle accident.

By decision dated November 8, 2013, OWCP terminated appellant's compensation benefits effective that day. It found the weight of the evidence was represented by Dr. Ma.

² Appellant also filed a claim for wage-loss compensation (Form CA-7) on June 14, 2013. By letter dated June 17, 2013, OWCP notified him that it could not proceed with the claim because the form was incomplete.

On November 15, 2013 appellant, through counsel, requested an oral hearing before an OWCP hearing representative. He submitted a November 27, 2013 report from Dr. Raghavan who reiterated her opinion that appellant was temporarily totally disabled.

In a February 4, 2014 report, Dr. David V. Anderson, a Board-certified orthopedic surgeon, noted a history that appellant was in a motor vehicle accident on March 13, 2013 and complained of bilateral shoulder pain. He diagnosed cervical disc disorder and bilateral shoulder joint pain.

A telephonic hearing was held before an OWCP hearing representative on February 13, 2014.

Appellant submitted a May 15, 2013 report from Dr. Michelle Levin, a clinical neuropsychology, who found that a psychiatric evaluation of appellant did not indicate any significant cognitive impairment. He also submitted work excuse notes from Dr. Raghavan dated August 14 through November 27, 2013.

By decision dated May 21, 2014, the hearing representative affirmed the November 8, 2013 termination decision. She found that Dr. Ma represented the weight of the medical evidence.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.³ 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.⁴ OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵ The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁶ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.⁷

ANALYSIS

OWCP accepted appellant's claims for bilateral wrist contusion, right knee contusion, bilateral shoulder sprains, chest wall contusion, lumbar sprain and cervical sprain. It terminated

³ See *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁴ See *I.J.*, 59 ECAB 524 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

⁵ See *J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

⁶ See *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁷ See *James F. Weikel*, 54 ECAB 660 (2003).

his compensation benefits effective November 8, 2013 on the grounds that the accepted employment-related conditions had resolved without residuals based on the opinion of the second opinion examiner, Dr. Ma. The issue is whether OWCP met its burden to terminate appellant's compensation benefits.

OWCP referred appellant to Dr. Ma for a second opinion evaluation to determine the nature and extent of his employment-related conditions. The Board finds that OWCP met its burden of proof to terminate appellant's compensation benefits based on the July 31, 2013 report of Dr. Ma who reviewed appellant's history of injury and medical treatment, examined him and found no objective evidence of ongoing residuals or disability due to the accepted bilateral wrist, right knee, bilateral shoulder, chest, lumbar, and cervical conditions. Dr. Ma reviewed the statement of accepted facts and the medical record. Upon examination of appellant's neck, found no asymmetry, no scars, no spasm, and no tenderness to palpation. Appellant was able to bring his chin to his chest, as well as to his left and right shoulders. Examination of both shoulders and upper extremities revealed no obvious atrophy, no swelling, no scars and a negative impingement sign. There was no evidence of any subluxation or dislocation about his shoulders. There was a negative apprehension sign. Appellant had a negative Tinel's sign over the elbows. He was able to go from full extension to making a full fist with all of his fingers. Appellant's Tinel's sign, Phalen's test, Finkelstein's test and Allen's test were all negative. He was able to bend forward and come to within two feet of touching the ground with his fingertips. Appellant's sciatic tension test was negative bilaterally. The right knee lacked 10 degrees of full extension and flexed to 110 degrees of flexion. Lachman's and McMurray's tests were negative. Dr. Ma concluded that appellant's employment-related conditions had resolved without residuals. He attributed appellant's ongoing condition to degenerative arthritis that was not due to the accepted motor vehicle accident. Dr. Ma opined that appellant had reached maximum medical improvement and released him to sedentary work with restrictions.

The Board finds that Dr. Ma's report represented the weight of the medical evidence. OWCP terminated benefits and that OWCP properly relied on his report in terminating appellant's compensation benefits. The Board finds that he had full and accurate knowledge of the relevant facts and evaluated the course of appellant's condition. Dr. Ma is a specialist in the appropriate field. His opinion is based on proper factual and medical history and his report contained a detailed summary of appellant's history. Dr. Ma addressed the medical records to make his own examination findings to reach a reasoned conclusion regarding appellant's conditions.⁸ He addressed appellant's preexisting degenerative disease and found no basis on which to attribute any residuals or continued disability to appellant's accepted conditions. Dr. Ma's opinion as set forth in his July 31, 2013 report is found to be probative evidence and reliable. The Board finds that Dr. Ma's opinion constitutes the weight of the medical evidence and is sufficient to justify OWCP's termination of benefits for the accepted conditions.

Dr. Raghavan diagnosed lumbar strain, neck strain, shoulder strain, knee contusion, wrist contusion, brain injury with concussion and contusion of sternum and opined that appellant was

⁸ See *Michael S. Mina*, 57 ECAB 379 (2006) (the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion are facts, which determine the weight to be given to each individual report).

disabled for work. She provided insufficient medical rationale explaining how these conditions were causally related to appellant's federal employment or why they rendered him totally disabled. Dr. Raghavan's reports are of diminished probative value and insufficient to overcome the weight of Dr. Ma's report or to create a medical conflict.

In a February 4, 2014 report, Dr. Anderson noted that appellant was in a motor vehicle accident on March 13, 2013 and complained of bilateral shoulder pain. He diagnosed cervical disc disorder and bilateral shoulder joint pain; however, Dr. Anderson did not provide any medical rationale explaining how appellant's condition was causally related to his federal employment or his accepted conditions on why they rendered him disabled. His report is of diminished probative value and insufficient to overcome the weight of Dr. Ma's report or to create a medical conflict.

The report from Dr. Levin contains no opinion as to whether appellant continues to have residuals from the accepted bilateral wrist, right knee, bilateral shoulder, chest, lumbar and cervical conditions. Thus, this report is insufficient to show that the termination was improper.

Accordingly, the Board finds that Dr. Ma's opinion constitutes the weight of the medical evidence and supports OWCP's decision terminating appellant's compensation benefits effective November 8, 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(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that OWCP properly terminated appellant's compensation benefits effective November 8, 2013.

ORDER

IT IS HEREBY ORDERED THAT the May 21, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 25, 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