

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

S.P., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Sandy Springs, OK, Employer**

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**Docket No. 14-1053
Issued: October 3, 2014**

Appearances:
Appellant, pro se
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 April 3, 2014 appellant filed a timely appeal of an October 22, 2013 decision of the Office of Workers' Compensation Programs (OWCP) concerning 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.

ISSUES

The issues are: (1) whether OWCP properly terminated appellant's compensation for wage-loss and medical benefits effective August 26, 2012 on the grounds that he no longer had any residuals or disability causally related to his accepted employment-related injuries; (2) whether appellant had any continuing employment-related residuals or disability after August 26, 2012.

On appeal, appellant contends that OWCP erred in terminating his compensation benefits as he continues to have residuals and disability from the accepted employment conditions. He

¹ 5 U.S.C. § 8101 *et seq.*

also argues that following the termination of his compensation there was a conflict in the medical opinion evidence based on the newly submitted medical reports.

FACTUAL HISTORY

On September 30, 1993 appellant, then a 33-year-old maintenance custodian,² filed a traumatic injury claim alleging that on September 29, 1993 he injured his back, left leg, left hip, rear end and testicles due to tripping and falling to the ground. OWCP accepted the claim for cervical sprain, lumbar sprain, left ankle sprain, a herniated nucleus pulposus at L5-S1, bilateral carpal tunnel syndrome, post-laminectomy syndrome, impotence of organic origin and thoracic or lumbosacral neuritis or radiculitis. Appellant stopped work on December 15, 1993. By letter dated March 16, 1995, OWCP placed him on the periodic rolls for temporary total disability and authorized a lumbar discectomy and fusion, which was performed on August 16, 1994. A left carpal tunnel release surgery was performed on April 22, 1997.³

On May 11, 2012 OWCP referred appellant for a second opinion evaluation with Dr. Dennis E. Foster, a Board-certified orthopedic surgeon, to determine his current medical residuals and work capability status. The attached statement of accepted facts listed the accepted conditions as cervical, lumbar and left ankle sprains, L5-S1 herniated disc, postlaminectomy syndrome and bilateral carpal tunnel syndrome. OWCP informed Dr. Foster that it had authorized a discectomy and fusion surgery and carpal tunnel release surgery.

In a May 29, 2012 report, Dr. Foster, reviewed the medical evidence, statement of accepted facts and presented findings on physical examination. He concluded that appellant's accepted employment conditions had resolved and no further treatment was required for the accepted employment injuries. In an attached work capacity evaluation form, he advised that appellant was capable of working an eight-hour day with restrictions. Cervical range of motion was 50 degrees extension, 35 degrees forward flexion and 85 degrees bilateral side rotation. Dr. Foster reported left ankle range of motion as 15 degrees ankle dorsiflexion, 20 degrees plantar flexion, 10 degrees eversion and 15 degrees inversion and lumbosacral range of motion as 75 degrees forward flexion, 10 degrees extension and 15 degrees bilateral side lateral bending. A physical examination revealed no paraspinous muscle spasm, mild discomfort on deep palpation of the lumbar midline segment, negative straight leg raising. Dr. Foster opined that appellant's work-related injury had ceased, that no further medical treatment was required and that appellant was capable of working eight hours a day with restrictions.

On June 15, 2012 OWCP issued a notice proposing to terminate appellant's wage-loss and medical benefits based on Dr. Foster's opinion. It found that Dr. Foster represented the weight of the medical evidence establishing that his accepted conditions had resolved.

² At the time of his injury appellant was working light-duty six hours per day due to a shoulder injury caused by a nonemployment injury falling out of a tree during hunting season.

³ The report was dictated on April 22, 1997 and transcribed on April 23, 1997. No date of surgery is noted on the report.

In a report dated July 11, 2012, Dr. F. David Kondos, an attending Board-certified family medicine physician, disagreed with the conclusions of Dr. Foster. He listed appellant's medical conditions, including bilateral carpal tunnel syndrome, chronic thoracic and lumbar back pain, bilateral leg neuropathy, impotence and ankle instability and pain. Dr. Kondos related that appellant also had severe depression and continued to be totally disabled as a result of his accepted work injuries.

By decision dated July 27, 2012, OWCP terminated appellant's compensation benefits effective August 26, 2012.

Subsequently OWCP received a February 13, 2013 cervical magnetic resonance imaging (MRI) scan and progress notes for the period November 12, 2012 to May 21, 2013 from Dr. Kondos. Dr. Kondos provided physical findings and opined that appellant continued to be totally disabled due to his employment injuries.

On July 24, 2013 counsel requested reconsideration of the July 27, 2012 decision terminating his benefits.

By decision dated October 22, 2013, OWCP denied modification of the July 27, 2012 decision.

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.⁴ After it has determined that an employee has disability causally related to 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.⁵ OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁷ 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.⁸

ANALYSIS

OWCP accepted appellant's claim for cervical sprain, lumbar sprain, left ankle sprain a herniated disc at L5-S1, bilateral carpal tunnel syndrome, postlaminectomy syndrome, impotence

⁴ *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁵ *I.J.*, 59 ECAB 524 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

⁶ *See J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

⁷ *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁸ *Kathryn E. Demarsh*, *supra* note 7; *James F. Weikel*, 54 ECAB 660 (2003).

of organic origin and thoracic or lumbosacral neuritis or radiculitis. It paid wage-loss and medical benefits. OWCP terminated appellant's wage-loss compensation and medical benefits effective August 26, 2012 finding that he no longer had any residuals or disability due to his accepted employment conditions.

In terminating appellant's compensation benefits, OWCP relied on the May 29, 2012 medical opinion of Dr. Foster, a second opinion Board-certified orthopedic surgeon. The Board finds that Dr. Foster's opinion is of diminished probative value and is insufficient to represent the weight of the medical evidence.

OWCP referred appellant for a second opinion evaluation with Dr. Foster to determine the nature and extent of his employment-related disability. In his May 29, 2012 report, Dr. Foster concluded that appellant's accepted employment injuries had resolved. He opined that appellant had no residuals and required no further treatment for the accepted employment conditions. Dr. Foster stated that appellant was capable of working an eight-hour day with restrictions. The Board finds that in addressing causal relationship, he provided insufficient medical rationale to support his conclusory opinion regarding whether appellant's accepted conditions had resolved. Dr. Foster provided a brief response to OWCP's question and did not explain how his examination supported his conclusion. He did not fully address each of the accepted conditions. OWCP's burden of proof to terminate compensation benefits must be based on rationalized medical opinion evidence. Dr. Foster failed to provide adequate rationale to support his conclusion that appellant's accepted conditions had resolved. His report is of limited probative value.⁹

Moreover, Dr. Foster's opinion is also of diminished probative value as it is based on an inaccurate statement of accepted facts. The Board has held that medical conclusions which are based on inaccurate or incomplete histories are of little probative value.¹⁰ OWCP provided Dr. Foster with appellant's case file and a statement of accepted facts, but the statement of accepted facts dated April 27, 2012 does not reflect that appellant's claim was accepted for impotence of organic origin and thoracic or lumbosacral neuritis or radiculitis. The statement of accepted facts provided to Dr. Foster listed the accepted employment conditions to be cervical, lumbar and left ankle sprains, L5-S1 herniated disc, postlaminectomy syndrome and bilateral carpal tunnel syndrome. OWCP procedures indicate that the accepted conditions must be included in a statement of accepted facts and when a second opinion specialist renders a medical opinion based on a statement of accepted facts which is incomplete or inaccurate or does not use the statement of accepted facts as the framework in forming his or her opinion, the probative value of the opinion is diminished.¹¹

⁹ *T.M.*, Docket No. 08-975 (issued February 6, 2009); *T.F.*, 58 ECAB 128 (2006); *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006); *see also S.D.*, 58 ECAB 713 (2007).

¹⁰ *L.G.*, Docket No. 09-1692 (issued August 11, 2010); *M.W.*, 57 ECAB 710 (2006); *James R. Taylor*, 56 ECAB 537 (2005) (medical conclusions based on an inaccurate or incomplete factual history are of diminished probative value).

¹¹ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3 (October 1990). *See Darletha Coleman*, 55 ECAB 143 (2003); *Richard O'Brien*, 53 ECAB 234 (2001).

Dr. Foster's opinion that appellant had no continuing employment-related disability is, therefore, based on an incomplete factual history. The Board finds that OWCP improperly relied on Dr. Foster's opinion to establish that appellant had no remaining disability or residuals from the accepted employment injuries. OWCP failed to meet its burden of proof to terminate his wage-loss and medical compensation benefits effective August 26, 2012.

CONCLUSION

The Board finds that OWCP improperly terminated appellant's wage-loss and medical compensation benefits effective August 26, 2012.¹²

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 22, 2013 is reversed.

Issued: October 3, 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

¹² In light of the Board's disposition of the first issue, the second issue is moot.