

FACTUAL HISTORY

On April 20, 2010 appellant, then a 53-year-old letter carrier, filed a traumatic injury claim indicating that he injured his lower back that day while lifting a tub of mail. He stopped work and was seen on April 21, 2010 by Dr. David J. Aarons, an internist at a Veterans Administration Medical Center (VA) hospital. A May 2008 magnetic resonance imaging (MRI) scan demonstrated lumbar radiculopathy. Dr. Aarons diagnosed low back strain and stated that appellant could return to light duty with physical restrictions. On May 12, 2010 he noted that appellant could return to work after a course of physical therapy.

OWCP accepted that appellant sustained a lumbar sprain and assigned Dianne Pyle, a medical management nurse, to facilitate his care. Appellant received continuation of pay and wage-loss compensation based on Form CA-7 claims. In reports dated August 5 to 31, 2010, Dr. Aarons advised that appellant could not return to work. On September 30, 2010 he referred appellant to orthopedic surgery.

In correspondence dated August 29, 2010 Ms. Pyle noted that she met with appellant and Dr. Aarons at the VA hospital on August 26, 2010 and believed that appellant should be evaluated by an orthopedic surgeon, as Dr. Aarons was an internist who told her that he had never treated work injuries.

The employing establishment informed OWCP that appellant returned to work on October 4, 2010. Two days later appellant was sent home under the National Reassessment Process because no limited duty was available. He continued to receive wage-loss compensation through November 19, 2010.

In reports dated November 30, 2010, Dr. J. Todd Smith, a Board-certified orthopedic surgeon, related a history of low back pain since 2007 to 2008 and that appellant had an earlier lumbar spine MRI scan, but continued his regular duties until the April 20, 2010 employment injury which caused severe low back pain. Examination findings included pain with back extension and normal sensation to light touch in the legs. X-rays of the lumbar spine demonstrated severe spondylosis at L5-S1 with mild disease at L3-4 and L4-5. A recent lumbar spine MRI scan showed multiple level disc bulges at L3-4, L4-5, and L5-S1 with severe foraminal stenosis at L5-S1. Dr. Smith diagnosed lumbar degenerative disc disease and chronic low back pain. He advised that the April 20, 2010 injury caused an exacerbation of appellant's symptoms that had returned to his preexisting baseline. Dr. Smith indicated that appellant could return to full duty and had no impairment with regard to the April 20, 2010 employment injury. On December 21, 2010 Dr. Aarons agreed with the interpretation provided by Dr. Smith with regard to appellant's condition.

Appellant returned to regular duty on December 11, 2010 and worked one full day, before applying for social security disability. On January 25, 2011 Dr. Aarons indicated that appellant could work four hours a day with a lifting restriction of 20 pounds. Walking, standing, sitting, bending, stooping, kneeling, twisting, pulling, pushing, climbing, reaching, and reaching above the head were limited to one hour. On February 2, 2011 appellant filed a Form CA-7 claim for compensation for the period November 20, 2010 to February 3, 2011. OWCP paid

compensation for the period November 20 through 30, 2010, noting that he was released to full duty on November 30, 2010.

In a February 23, 2011 decision, OWCP terminated appellant's wage-loss and medical benefits, effective February 24, 2011. It found that the weight of the medical evidence rested with the opinion of Dr. Smith who advised that the accepted lumbar sprain and any aggravation of preexisting condition had ceased and noted that Dr. Aarons agreed with Dr. Smith's assessment. Appellant timely requested a review of the written record.

On April 4, 2011 Dr. Aarons noted appellant's dates of examination, that he had symptoms of low back pain with physical examination findings of tenderness and spasm in the lumbar area. He diagnosed multilevel degenerative disc disease with foraminal narrowing at all lumbar levels, most severe at L5-S1, outlined his course of treatment, and stated that he was injured while on the job lifting mail. Dr. Aarons opined that appellant's condition was "definitely work related at the [employing establishment]." Appellant was separated from the employing establishment, effective April 20, 2011. In a May 9, 2011 statement, he noted that social security disability had been approved but asserted that, based on Dr. Aarons' opinion, he continued to have work restrictions.

On June 16, 2011 an OWCP hearing representative affirmed the February 23, 2011 decision terminating appellant's compensation and medical benefits. Further, she found that he had failed to provide medical documentation of continued disability due to the accepted traumatic injury that occurred on April 20, 2010. Rather, the medical evidence demonstrated that appellant's back condition preexisted the April 10, 2010 injury. The hearing representative also noted that he had previously filed an occupational disease claim that had been denied.

Appellant appealed the hearing representative's decision to the Board. In a May 9, 2012 order, the Board remanded the case for the instant claim, adjudicated by OWCP under file number xxxxxx616, to be consolidated with file number xxxxxx952, followed by an appropriate decision.

OWCP thereafter doubled the case files. In file number xxxxxx952, appellant filed an occupational disease claim on January 24, 2011 alleging that for 20 or more years he loaded and unloaded half-ton trucks, top to bottom, and this caused acute lower back pain with tingling and weakness in the legs, neck, arm, and shoulder pain. He first realized the condition was caused or aggravated by employment on April 20, 2010, the date of his traumatic injury which had been accepted for lumbar sprain. In an attached statement appellant indicated that his chronic back pain limited standing and sitting, and that he had other medical conditions that caused a loss of concentration. The employing establishment controverted the occupational disease claim, maintaining that he did not load or unload trucks and was assigned a passenger van for his deliveries. OWCP had denied the occupational disease claim on March 21, 2011.

The medical evidence submitted in support of the occupational disease claim included a May 1, 2008 MRI scan of the lumbosacral spine which indicated that degenerative changes had progressed since February 1, 2005. An April 20, 2010 lumbosacral spine x-ray demonstrated mild to moderate degenerative changes. In treatment notes dated August 2 and 27, September 30 and October 25, 2010, Dr. Aarons discussed appellant's medical problems and reviewed the

May 2008 MRI scan. A November 17, 2010 lumbar MRI scan showed multilevel degenerative changes resulting in neural foramina narrowing at L3-4, L4-5, and L5-S1 where it was most severe. On November 18, 2010 Dr. Aarons noted the November 17, 2010 MRI scan findings. He reiterated his findings on December 21, 2010 and January 25, 2011.

In a treatment note dated March 3, 2011, Dr. Aarons repeated his discussion of appellant's condition. He stated that lumbar radiculopathy was first diagnosed on January 25, 2005 and advised that a May 2008 lumbar spine MRI scan demonstrated nerve root impingement. Dr. Aarons noted the findings of the November 2010 MRI scan and concluded that appellant could return to limited duty with restrictions of no standing, sitting, bending, stooping, and driving for more than one hour at a time with a 10-pound lifting restriction.² On April 4, 2011 he noted symptoms of low back pain and opined that this was definitely related to lifting mail at the employing establishment.

Under file number xxxxxx616, after reviewing the medical evidence in both case files and finding no evidence to support disability or residuals from the April 20, 2010 employment injury, by decision dated September 12, 2012, OWCP again terminated appellant's benefits effective August 22, 2012.

On October 5, 2012 appellant requested a hearing. On October 23, 2012 Dr. Aarons indicated that the conclusions on his April 4, 2011 report were still current. In a January 14, 2013 treatment note he reiterated his description of appellant's medical diagnoses including multilevel degenerative disc disease. Dr. Aarons advised that a neurosurgery consult was rejected.

At the hearing, held on February 15, 2013, appellant's representative argued that Dr. Aarons' reports established that appellant continued to be disabled due to the employment injury. Appellant thereafter submitted duplicates of evidence previously of record and copies of regulations regarding the selection of treating physicians under the Energy Employees Occupational Illness Compensation Program Act. In a March 15, 2013 statement, he maintained that he was coerced by the medical management nurse, Ms. Pyle, to see Dr. Smith. Appellant submitted a copy of a March 24, 2011 Social Security Administration decision granting disability benefits. In an April 24, 2013 statement, a coworker, stated that he had one of the heaviest collection routes which required physical efforts that were bad for his back.

By decision dated May 7, 2013, an OWCP hearing representative affirmed the September 12, 2012 decision, finding that the medical evidence established that the lumbar sprain of April 20, 2010 had resolved and appellant had returned to baseline with regard to the preexisting degenerative disc disease.

On January 24, 2014 appellant requested reconsideration of the May 7, 2013 decision. He asserted that the job duties of 25 years of the employing establishment caused his degenerative back condition which was exacerbated by the April 20, 2010 employment injury. In reports dated April 30 and July 5, 2013, Dr. Aarons indicated that appellant had severe multilevel degenerative disc disease with severe foraminal stenosis at L5-S1 that would not

² Appellant also submitted medical evidence relevant to additional medical conditions not at issue in this case.

improve. He opined that appellant's inability to work as a letter carrier was "directly due to [appellant's] lumbar spine injury which I believe was incurred while working for the [employing establishment]." Dr. Aarons advised that appellant had permanent restrictions due to this injury of no lifting more than 10 pounds, no stooping, bending, twisting, or reaching over his head, and driving and sitting should be limited to less than one hour.

In a March 17, 2014 merit decision, OWCP declined to modify the May 7, 2013 decision. It discussed the evidence submitted and found that Dr. Aarons had not explained how the April 20, 2010 employment injury caused or aggravated the preexisting multilevel degenerative disc disease and that he failed to provide medical rationale to support that appellant continued to have disability or residuals due to the April 20, 2010 employment injury.

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.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 -- ISSUE 1

The accepted condition in file number xxxxxx616 is lumbar sprain caused by an April 20, 2010 employment injury. On September 30, 2010 appellant's attending physician Dr. Aarons, an internist, referred appellant for an orthopedic evaluation, and he was seen by Dr. Smith, a Board-certified orthopedic surgeon on November 30, 2010. Appellant filed an occupational disease claim on January 24, 2011, adjudicated by OWCP under file number xxxxxx952. He alleged that employment duties over the years caused chronic, radiating back pain.

Under file number xxxxxx616, OWCP terminated appellant's compensation benefits effective February 24, 2011. By decision dated March 21, 2011, it denied the occupational disease claim, file number xxxxxx952. A hearing representative affirmed the termination of file number xxxxxx616 on June 16, 2011. Appellant filed an appeal of this decision with the Board, and in an order dated May 9, 2012, the Board remanded the case to OWCP to double the two files. OWCP doubled the files, and by decision dated September 12, 2012, terminated appellant's benefits under file number xxxxxx616, effective August 22, 2012. An OWCP hearing representative affirmed this decision on May 7, 2013. Appellant requested reconsideration of both claims on January 24, 2014. In a May 17, 2014 merit decision on file number xxxxxx616, OWCP declined to modify the May 7, 2013 decision, finding that Dr. Aarons failed to provide medical rationale to support that appellant continued to have disability or residuals due to the April 20, 2010 employment injury. The record indicates that appellant received no wage-loss compensation after November 30, 2010.

³ *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁴ *Id.*

Regarding the termination of benefits under file number xxxxxx616, the Board finds that the weight of the medical evidence rests with the opinion of Dr. Smith, and that OWCP properly relied on his opinion in terminating appellant's compensation and medical benefits for the April 20, 2010 injury accepted for lumbar sprain.

The medical evidence includes May 1, 2008 and November 17, 2010 MRI scan studies of the lumbar spine and an April 20, 2010 computerized tomography scan of the lumbar spine. These demonstrated preexisting multilevel degenerative disc disease but did not provide a cause of these conditions. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁵

In his November 30, 2010 report, Dr. Smith noted appellant's history of low back pain dating back a number of years and that appellant had continued to perform regular job duties. He reported appellant's description of the April 20, 2010 employment injury. Dr. Smith reviewed lumbar x-rays and MRI scan studies and provided comprehensive examination findings in support of his opinion that the residuals of the April 20, 2010 employment injury had ceased and that appellant had returned to baseline with regard to his preexisting degenerative back condition. He advised that appellant could return to full duty.

On December 21, 2010 Dr. Aarons noted his agreement with Dr. Smith's assessment regarding appellant's back condition. He also noted in March and April 2011 and October 2012 that lumbar radiculopathy had first been diagnosed in January 2005 and that appellant had symptoms of low back pain with physical examination findings of tenderness and spasm in the lumbar area, and diagnosed multilevel degenerative disc disease of the lumbar spine. Dr. Aarons opined that this was related to appellant's federal employment. He, however, did not explain how the diagnosed condition was caused by the April 20, 2010 lumbar sprain or indicate why or if his agreement with Dr. Smith's assessment had changed. Moreover, degenerative disc disease has not been accepted as employment related.

The weight of the medical evidence, as characterized by Dr. Smith's report and Dr. Aarons' December 21, 2010 concurrence, established that the April 20, 2010 lumbar sprain had resolved. The condition of degenerative disc disease of the lumbar spine has not been accepted as employment related. OWCP therefore met its burden of proof to terminate appellant's wage-loss compensation and medical benefits under file number xxxxxx616, effective August 22, 2012.⁶

LEGAL PRECEDENT -- ISSUE 2

As OWCP met its burden of proof to terminate appellant's wage-loss compensation on August 22, 2012, the burden shifted to him to establish any continuing disability causally related

⁵ *Willie M. Miller*, 53 ECAB 697 (2002).

⁶ The Board also notes that a second pretermination notice was not required prior to the August 22, 2012 termination. Appellant only received wage-loss compensation for the period June 5 to November 30, 2010. OWCP procedures provide that a pretermination notice is not required when a beneficiary has no reasonable basis to expect that payment of compensation will continue or when compensation has been paid for less than one year. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.4.a (February 2013).

to the accepted lumbar conditions.⁷ Causal relationship is a medical issue. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁸

ANALYSIS -- ISSUE 2

The Board finds that appellant has not established continuing residuals of his accepted lumbar sprain on or after August 22, 2012.

The regulations regarding Energy Employees Occupational Illness Compensation Program Act are of no probative value in this case administered under FECA. As to the Social Security Administration decision dated March 24, 2011 granting disability benefits, the determination of an employee's rights or remedies under other statutory authority does not establish entitlement to benefits under FECA.⁹

As noted above, the diagnostic studies found in the record did not provide a cause of any diagnosed conditions and medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁰

Appellant also submitted reports from Dr. Aarons dated March 3, 2011 to July 5, 2013. As noted above, Dr. Aarons indicated that lumbar radiculopathy had first been diagnosed in January 2005. On April 4, 2011 he advised that appellant's condition was definitely related to his employment and indicated on October 23, 2012 that this conclusion was still current. In April 30 and July 5, 2013 reports, Dr. Aarons advised that appellant had severe multilevel degenerative disc disease with severe foraminal stenosis at L5-S1 that would not improve and opined that his inability to work as a letter carrier was directly due to his lumbar spine injury which, he believed was due to working for the employing establishment. In none of these reports, however, did Dr. Aarons specifically indicate that appellant was disabled due to the April 20, 2010 lumbar sprain or relate his diagnosed degenerative low back condition to the April 20, 2010 lumbar sprain at issue in the present case. The Board therefore finds that Dr. Aarons' opinion is of insufficient probative value to meet appellant's burden to establish that he has continued work-related disability due to the accepted April 20, 2010 lumbar sprain after the termination of benefits on August 22, 2012.

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.

⁷ See *Daniel F. O'Donnell, Jr.*, 54 ECAB 456 (2003).

⁸ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

⁹ *J.F.*, 59 ECAB 331 (2008).

¹⁰ *Supra* note 5.

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective August 22, 2012 as he had no residuals of the accepted lumbar sprain and that he failed to establish continuing employment-related disability or condition after that date causally related to the April 20, 2010 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the March 17, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 16, 2015
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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