

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

C.D., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Coppell, TX, Employer)

**Docket No. 15-446
Issued: April 27, 2015**

Appearances:
Lonnie Boylan, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 19, 2014 appellant, through counsel, filed a timely appeal from a July 17, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 wage-loss compensation and medical benefits effective July 27, 2014 as he no longer had any residuals or disability causally related to his accepted employment-related injury.

FACTUAL HISTORY

On February 1, 1995 appellant, then a 43-year-old maintenance mechanic, filed an occupational disease claim for a chronic back strain and lumbar disc disease. He first became

¹ 5 U.S.C. § 8101 *et seq.*

aware of his condition on September 21, 1994. On September 26, 1995 OWCP accepted the claim for temporary aggravation of preexisting lumbar sprain. The record reflects appellant has preexisting nonwork-related conditions of arthritis and degenerative joint/disc disease, which was a service-connected disability, and underwent an L5-S1 discectomy in July 1989. Appellant stopped work on January 30, 1995 and has not returned. OWCP retained him on the periodic compensation rolls.

The record does not have any additional medical evidence until 2003. In an August 11, 2003 report, Dr. Wendell D. Daniels, a Board-certified internist, found that appellant had reached maximum medical improvement (MMI) and could work eight hours a day with restrictions. On September 24, 2003 appellant rejected a September 22, 2003 limited-duty job offer. OWCP took no further action.

In a May 9, 2011 report, Dr. Charles D. Mitchell, a Board-certified orthopedic surgeon and OWCP referral physician, diagnosed appellant with residuals of lumbar disc disease, which had been aggravated in 1995. He did not find any further need for treatment but that appellant could not return to his work as a mechanic. On a Form OWCP-5c, work capacity evaluation, Dr. Mitchell found appellant capable of working six hours a day with permanent restrictions. A comprehensive reconditioning program was recommended.

In an October 24, 2012 letter, OWCP requested a comprehensive medical report concerning appellant's accepted work-related condition. This request, however, was returned to OWCP as undeliverable.

On February 15, 2013 OWCP referred appellant, along with a statement of accepted facts, the medical record, and a list of questions, to Dr. John A. Sklar, a Board-certified physiatrist. In an April 4, 2013 report, Dr. Sklar noted the history of injury and appellant's prior back surgery along with a review of the records. He also presented findings on examination. Dr. Sklar opined that the accepted work injury did not affect appellant's preexisting back problem. He diagnosed lumbar sprain/strain, which resolved within two to three months from the date of injury without disabling residuals. Dr. Sklar opined that appellant could work without any restrictions due to his work injury and filled out a work capacity evaluation accordingly. He recommended appellant start part-time work for one month and then full duty as he has not worked in over 15 years.

OWCP determined there was a conflict in medical evidence with regard to appellant's work capabilities and referred appellant, along with a statement of accepted facts, the medical record and a list of questions, to Dr. David D. Sanderson, a Board-certified orthopedic surgeon, to resolve the conflict. In a June 19, 2013 report, Dr. Sanderson noted the history of injury, his review of the medical records, which were noted as being sparse, and findings on examination. He found appellant had absent Achilles' reflex on the left with three centimeter atrophy of his left calf and a two centimeter atrophy of his left thigh compared to the right, which was most likely related to the S1 compressed nerve that he had in the military. Dr. Sanderson opined that there is no injury-related disability or residuals from the accepted work-related condition of September 21, 1994. He explained that the lumbosacral strain had temporarily aggravated appellant's preexisting condition and should have resolved in three to six months. Dr. Sanderson noted that appellant had not worked for 20 years and had comorbid medical problems, but found

that he could gradually be worked into a full-time position. Appellant had a functional capacity evaluation on July 30, 2013 and Dr. Sanderson opined, in an August 2, 2013 work capacity evaluation, that appellant had reached maximum medical improvement and, while he was not able to perform his usual job, he could gradually be worked into a full-time position with restrictions. The restrictions, including the gradual increase in work hours, were due only to appellant's nonwork-related conditions.

By notice dated June 10, 2014, OWCP proposed to terminate medical benefits and compensation for wage loss based on the weight of medical evidence of Dr. Sanderson, who found no residuals or disability causally related to the September 21, 1994 work injury. Appellant was provided 30 days to submit additional evidence or argument. No additional evidence was received from him.

By decision dated July 17, 2014, OWCP terminated appellant's claim for medical and wage-loss benefits effective July 27, 2014 as the weight of the medical evidence continued to rest with Dr. Sanderson's report.

LEGAL PRECEDENT

Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his or her employment, it may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.² OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.³ Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, OWCP must establish that a claimant no longer has residuals of an employment-related condition that requires further medical treatment.⁴

Section 8123(a) of FECA provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.⁵ The implementing regulations state that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an OWCP medical adviser, OWCP shall appoint a third physician to make an examination. This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.⁶ In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the

² *Jason C. Armstrong*, 40 ECAB 907 (1989).

³ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁴ *Mary A. Lowe*, 52 ECAB 223 (2001); *Wiley Richey*, 49 ECAB 166 (1997).

⁵ 5 U.S.C. § 8123(a).

⁶ 20 C.F.R. § 10.321.

purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁷

ANALYSIS

OWCP accepted that on September 21, 1994 appellant sustained temporary aggravation of preexisting lumbar sprain. Appellant stopped work on January 30, 1995 and received compensation benefits.

OWCP determined that a conflict in medical opinion existed on work capacity related to the September 21, 1994 temporary aggravation of preexisting lumbar sprain. The last medical report from appellant's treating physician, Dr. Daniels, dated August 11, 2003; however, found that appellant could work eight hours a day with restrictions. On March 27, 2013 Dr. Sklar, an OWCP referral physician, opined that appellant's lumbar sprain/strain, had resolved within two to three months from the date of injury without disabling residuals and that he could work without any restrictions due to his work injury. His recommendation that appellant start part-time work for one month and then full duty was due to the fact that appellant had not worked in more than 15 years. This medical evidence does not represent a conflict in medical opinion, but an agreement that appellant's work condition had resolved with no disabling residuals and he was capable of working full time without restrictions.⁸ Thus, as no conflict in medical opinion existed, OWCP's referral to Dr. Sanderson was that of a second opinion examiner as opposed to an impartial medical specialist.

Dr. Sanderson reviewed the complete medical record, including a July 30, 2013 functional capacity evaluation, the statement of accepted facts, and performed a comprehensive examination of appellant on June 19, 2013. He opined that there was no disability nor residuals from the accepted work-related condition of September 21, 1994 as the lumbosacral strain had temporarily aggravated appellant's preexisting condition and should have resolved in three to six months. Dr. Sanderson noted that appellant had not worked for 20 years and had comorbid medical problems, but opined that he could gradually be returned to a full-time position with restrictions due to his nonwork-related conditions. OWCP issued a preliminary notice of termination on June 10, 2014 and then finalized the termination of appellant's wage-loss and medical benefits effective July 27, 2014 based on Dr. Sanderson's June 19, 2013 report.

The Board finds that Dr. Sanderson's opinion is sufficient to establish that the accepted temporary aggravation of preexisting lumbar sprain had resolved without residuals or disability as of July 27, 2014. Dr. Sanderson's report was based on the complete medical record and a statement of accepted facts. He also performed a thorough clinical examination. Dr. Sanderson presented detailed rationale explaining why any work restrictions would be related to appellant's nonwork-related conditions. The Board finds that his report is sufficiently rationalized to represent the weight of the medical evidence in this case.⁹ The Board notes there is no

⁷ *Gloria J. Godfrey*, 52 ECAB 486 (2001); *Jacqueline Brasch (Ronald Brasch)*, 52 ECAB 252 (2001).

⁸ *See W.C.*, Docket No. 13-705 (issued September 4, 2013).

⁹ *See Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

contemporaneous medical evidence from an attending physician that discussed a continuing employment-related disability. Prior to the termination, the last report from an attending physician, Dr. Daniels, was dated August 11, 2003 and noted that appellant had reached maximum medical improvement and could work eight hours a day with restrictions.

On appeal, counsel asserts several arguments pertaining to Dr. Sanderson's status as impartial examiner and that his report should not be given special weight as an impartial medical specialist. As no conflict in medical opinion existed at the time of OWCP's referral to Dr. Sanderson, his status is considered that of a second opinion physician.¹⁰ Counsel's remaining arguments pertained to appellant's preexisting medical conditions and Dr. Sanderson's answers to OWCP's questions were insufficient. The Board found Dr. Sanderson's report to be based on the complete medical record and a statement of accepted facts, and provided sound rationale for his findings.

The Board finds that OWCP met its burden of proof to terminate compensation for wage-loss and medical benefits effective July 27, 2014.

Appellant may submit evidence or argument with a written request for reconsideration 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 met its burden of proof to terminate appellant's compensation benefits effective July 27, 2014 as he no longer had any residuals or disability causally related to his accepted September 21, 1994 employment-related injury.

¹⁰ See *Pierre W. Peterson*, 39 ECAB 955 (1988).

ORDER

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

Issued: April 27, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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