

FACTUAL HISTORY

Appellant, a 37-year-old meat inspector, slipped and fell while descending a flight of stairs on January 16, 2007. He filed a claim for benefits, which OWCP accepted for degeneration of lumbar or lumbosacral intervertebral disc. Appellant has not worked since September 11, 2007. OWCP commenced payment of compensation for temporary total disability compensation benefits.

To determine appellant's current condition and ascertain whether he still suffered residuals from his accepted degeneration of lumbar intervertebral disc condition, OWCP referred appellant to Dr. Derry Crosby, Board-certified in orthopedic surgery, for a second opinion examination. In a report dated April 26, 2011, Dr. Crosby stated findings on examination, reviewed the medical history and statement of accepted facts, and opined that appellant did not have any significant, ongoing issues which would affect his return to his previous job. He advised that appellant had complaints of constant back pain, primarily stiffness in his lower back which radiated into his lower extremities behind the left thigh, left leg, and into the bottom of the foot. Dr. Crosby stated that appellant had sustained an acute exacerbation of the lumbar strain superimposed on preexisting degenerative disc disease, particularly at the L5-S1 level, that was exacerbated by his January 16, 2007 fall at work. He opined that appellant's ongoing lower back symptoms were due to the underlying degenerative changes at the L5-S1 level and that he did not have any profound changes in terms of motor or nervous effects of the lower extremities. Dr. Crosby stated that the underlying condition may have been affected by the work injury and that the acute fall certainly aggravated the tightness of the canal at the L5-S1 level, which would certainly produce localized pain with swelling of the nerve roots involved. He reported, however, that appellant's present examination along with the functional capacity evaluations indicated that he had recovered from the acute injury. Dr. Crosby released appellant to return to work without restrictions.

On January 17, 2012 OWCP issued a notice of proposed termination of compensation to appellant. It found that the weight of the medical evidence, as represented by Dr. Crosby's referral report, established that he was no longer disabled due to his accepted January 16, 2007 injury. OWCP informed appellant that he could submit additional medical evidence within 30 days.

By decision dated March 7, 2012, OWCP terminated appellant's compensation and medical benefits, finding that Dr. Crosby's referral opinion represented the weight of the medical evidence.

On March 14, 2012 appellant requested reconsideration. By decision dated April 20, 2012, OWCP denied modification of the March 7, 2012 termination decision. Appellant again requested reconsideration on August 13, 2012. OWCP denied modification of the March 7, 2012 termination decision again on October 16, 2012.

By letter dated August 9, 2013, appellant, through counsel, requested reconsideration.

In a report dated June 28, 2013, received by OWCP on August 9, 2013, Dr. Ralph S. Stoetzel, Board-certified in orthopedic surgery, stated that appellant's January 16, 2007 fall at

work resulted in a permanent aggravation. He based this opinion on the fact that five years had elapsed since his injury, but he was still experiencing lumbar symptoms. Dr. Stoetzel advised that appellant did not have any significant lumbar issues and/or limitations before the 2007 work injury and had since been unable to return to his preinjury status or work duties. Based on these facts, he opined that appellant's continuing need for medical care was related to his work-related injury.

By decision dated September 19, 2013, OWCP denied modification of the March 7, 2012 termination decision.

On August 12, 2014 appellant requested reconsideration.

In a report dated December 18, 2013, Dr. Stoetzel reiterated that the January 16, 2007 fall at work permanently aggravated his degenerative disc disease. He advised that conservative, nonsurgical treatment had failed to repair his back and recommended fusion surgery to ameliorate his back condition. Dr. Stoetzel opined that appellant was unable to work as a poultry inspector due to his accepted back injury.

Dr. Erik T. Bendiks, a specialist in orthopedic surgery, in a June 18, 2014 report, advised that appellant had numbness and tingling radiating to both feet which was triggered by standing or sitting. He stated that appellant underwent a course of physical therapy and received lumbar epidural injections; these treatments, however, did not provide any pain relief. Dr. Bendiks noted that appellant underwent a magnetic resonance imaging (MRI) scan of the lumbar spine on March 5, 2013 which showed disc desiccation at L4-S1 with decreased disc height at L5-S1; an L4-5 disc bulge; and an L5-S1 left sided disc herniation with nerve root impingement. He stated that appellant also underwent a lumbar spine x-ray during his examination which demonstrated decreased disc height at L5-S1. Dr. Bendiks diagnosed lumbago, lumbar disc herniation at L5-S1, lumbar internal disc disruption at L4-S1, lumbar spinal stenosis, spondylolisthesis and lumbar radiculopathy, with nerve root impingement at L5-S1 as well as grade 1 spondylolisthesis. He opined that appellant's current pain was a direct result of the accident and was consistent with the mechanism of injury.

Dr. Bendiks advised that appellant was not at maximum medical improvement and recommended that he undergo an updated, high resolution MRI scan of the lumbar spine, without contrast. He stated that, if there was no change from the current study, appellant could consider anterior lumbar interbody fusion at L5-S1, with autograft and facet screws to treat his lumbar spine injury. Dr. Bendiks advised that he could return to work with modifications, including no lifting greater than 10 pounds, no repetitive bending, no exposure to vibration, no static standing greater than 20 minutes and a change in position as needed.

By decision dated November 3, 2014, OWCP denied modification of the March 7, 2012 termination decision.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim, it has the burden of justifying modification or termination of an employee's benefits.² 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

OWCP in its March 7, 2012 decision relied on the April 26, 2011 report of Dr. Crosby, the referral examiner, to find that appellant's accepted back condition had ceased and that he no longer had any residuals from these conditions. Dr. Crosby stated that there were no objective findings to support an ongoing lumbar strain or radiculopathy. While he advised that appellant did have degenerative disc disease, this was preexisting and unrelated to an employment injury or employment work factors. Dr. Crosby opined that appellant did not have any ongoing issues of a significant nature to affect his return to his previous occupation. He released him to return to work without restrictions.

The Board finds that Dr. Crosby's referral opinion established that appellant no longer had any residuals from his accepted degeneration of lumbar or lumbosacral intervertebral disc condition. Dr. Crosby's opinion is sufficiently probative, rationalized, and based upon a proper factual background. Therefore, OWCP properly found that his referral opinion negated a causal relationship between appellant's current condition and his accepted employment injuries and that it represented the weight of the medical evidence in its March 7, 2012 termination decision.

LEGAL PRECEDENT -- ISSUE 2

Following a proper termination of compensation benefits, the burden of proof shifts back to the claimant to establish continuing employment-related disability.⁵ To prevail, appellant must establish by the weight of reliable, probative, and substantial evidence that he had an employment-related disability which continued after the termination of compensation benefits.⁶

ANALYSIS -- ISSUE 2

The issue of whether appellant is still entitled to compensation for continuing disability and whether he continued to experience residuals from his accepted condition is a medical one, based on the medical evidence of record. Appellant requested reconsideration on August 12,

² *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

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

⁴ *Id.*

⁵ *John F. Glynn*, 53 ECAB 562 (2002).

⁶ *Talmdge Miller*, 47 ECAB 673, 679 (1996).

2014 and submitted reports from Dr. Stoetzel and Dr. Bendiks. These reports, however, do not provide a probative medical opinion as to whether he was disabled or currently required medical treatment due to an employment-related condition. Dr. Stoetzel stated in his December 18, 2013 report that conservative, nonsurgical treatment had failed to ameliorate appellant's back condition and recommended that he undergo fusion surgery. He opined that the January 16, 2007 employment injury permanently aggravated his degenerative disc disease and that he was unable to work at his former job as a poultry inspector due to the accepted back injury. Dr. Stoetzel's report did not constitute sufficient medical evidence demonstrating that appellant had any continuing disability attributable to the January 16, 2007 work injury. He merely asserted that the January 16, 2007 employment injury permanently aggravated his degenerative disc disease and that he was unable to work at his preinjury job.

In his June 18, 2014 report, Dr. Bendiks noted that appellant had attempted to treat his degenerative disc disease with conservative treatment, which included physical therapy and lumbar epidural injections. He advised that these treatments did not ameliorate appellant's back condition or provide pain relief. Dr. Bendiks related results of diagnostic tests which included a March 5, 2013 lumbar MRI scan and lumbar x-rays which demonstrated decreased disc height at L5-S1. He diagnosed lumbago, lumbar disc herniation at L5-S1, lumbar internal disc disruption at L4-S1, lumbar spinal stenosis, spondylolisthesis and lumbar radiculopathy, with nerve root impingement at L5-S1 as well as grade 1 spondylolisthesis. Dr. Bendiks asserted that appellant was not at maximum medical improvement and recommended that he undergo an updated, high resolution MRI scan of the lumbar spine, without contrast. He stated that if there was no change from the current study appellant could consider anterior lumbar interbody fusion at L5-S1, with autograft and facet screws to treat his lumbar spine injury. Dr. Bendiks opined that appellant's current pain was a direct result of the accident and was consistent with the mechanism of injury. He stated, however, that appellant could return to work with modifications, including no lifting greater than 10 pounds, no repetitive bending, no exposure to vibration, no static standing greater than 20 minutes and a change in position as needed.

Neither Dr. Stoetzel nor Dr. Bendiks provided a well-reasoned and sufficiently supported opinion that would negate OWCP's March 7, 2012 determination that appellant did not have any employment-related disability or residuals stemming from his accepted degeneration of lumbar intervertebral disc condition. Their reports do not outweigh Dr. Crosby's opinion, nor do they negate OWCP's finding in its March 7, 2012 decision that Dr. Crosby's referral opinion represented the weight of the medical evidence. Thus OWCP properly found in its November 3, 2014 decision that appellant failed to submit medical evidence sufficient to modify OWCP's March 7, 2012 termination decision.

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's compensation benefits as of March 7, 2012. The Board also finds that appellant has not met his burden of proof to establish continuing disability after March 7, 2012.

ORDER

IT IS HEREBY ORDERED THAT the November 3, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 6, 2015
Washington, DC

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

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

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