

FACTUAL HISTORY

This case has previously been before the Board with regard to the denial of appellant's claim for leave buyback and wage-loss compensation.² In an April 1, 2014 decision, the Board set aside OWCP decisions which denied his claim for leave buyback and wage-loss compensation for the period November 30, 2011 to April 20, 2012 and his request for a review of the written record as untimely. The Board remanded the case for OWCP to refer appellant to an appropriate second opinion specialist to determine whether he sustained a recurrent herniated disc due to his accepted October 13, 2011 employment-related injury, whether the same accepted work injury exacerbated or aggravated his preexisting lumbar degenerative disc disease, and whether the recommended surgery was appropriate and causally related to the stated accepted injury. The relevant facts are set forth below.

OWCP accepted that on October 13, 2011 appellant, then a 55-year-old industrial engineering technician, sustained a back sprain of the lumbar region when he slipped and fell while walking down a three-inch wet concrete incline. He stopped work on November 29, 2011.

Following issuance of the Board's April 1, 2014 decision, OWCP, on May 22, 2014, referred appellant, together with a statement of accepted facts and the medical record, to Dr. Alexander N. Doman, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a July 9, 2014 medical report, Dr. Doman reviewed the statement of accepted facts, the results of a September 27, 2011 lumbar magnetic resonance imaging (MRI) scan, and history of the accepted October 13, 2011 employment injury. On physical examination, he found no acute distress. Dr. Doman stated that appellant had obvious, intentional symptom exaggeration with complaints of excruciating back pain with simple attempts to flex his left and right knee while in the prone position on a nonphysiologic and nonanatomic basis which was indicative of intentional exaggeration of his complaints for purposes of secondary gain. He found symmetric deep tendon reflexes on physical examination. A straight leg test was negative. There were no signs of muscular atrophy. X-rays of the lumbar spine showed disc space narrowing at L4-S1. Nerve conduction velocity studies of the left lower extremity showed nonspecific F-wave abnormality that was possibly secondary to L5-S1 radiculopathy.

Dr. Doman opined that appellant's accepted work-related condition of the lumbar sprain had resolved. He explained that a lumbar strain was a minor soft tissue injury that uniformly resolved in a relatively brief period of time and certainly less than 90 days. Dr. Doman opined that appellant had most certainly not sustained a recurrent herniated disc as a result of his October 13, 2011 work injury. He explained that a disc injury with herniation was well-documented on a prior MRI scan of the lumbar spine performed on September 27, 2011. Dr. Doman opined that appellant did not sustain an aggravation of his preexisting degenerative disc disease. He stated that it was clear from the prior MRI scan that appellant was already symptomatic from degenerative disc disease of the lumbar spine. Dr. Doman noted that any increased subjective complaints that he had after this injury merely represented the natural history of his preexisting condition. He stated that appellant's subjective complaints appeared to be grossly exaggerated for purposes of deceiving him. Dr. Doman advised that there were no

² Docket No. 13-59 (issued April 1, 2014).

residual conditions that resulted from the accepted work injury. He further advised that the requested lumbar fusion at the L4-S1 levels was unequivocally not related to appellant's accepted work injury based on the rationale described above. Dr. Doman related that appellant was most certainly not disabled for work from November 30, 2011³ to April 20, 2012 due to his work-related condition. He explained that any back pain appellant had would have been the natural sequela in progression of his preexisting lumbar spine degenerative disorder.

In an August 14, 2014 decision, OWCP denied appellant's claims for leave buyback compensation for the period November 29, 2011 to April 12, 2012 and leave without pay compensation for the period March 23 to April 20, 2012 based on Dr. Doman's opinion.

By notice dated December 15, 2014, OWCP advised appellant that it proposed to terminate his wage-loss compensation and medical benefits because Dr. Doman's July 9, 2014 report found that appellant had no continuing residuals or disability due to his accepted employment injury. It afforded appellant 30 days to submit additional evidence or argument regarding the proposed termination.⁴

Appellant submitted laboratory tests dated November 12, 2013 and December 5, 2014.

In reports dated September 8, 2014 to January 25, 2015, Dr. Steve N. Tafor, an attending Board-certified anesthesiologist, noted appellant's complaints of abdominal and postlumbar laminectomy, and degenerative lumbar disease with radiculopathy. He provided examination findings and assessed appellant as having lumbar postlaminectomy syndrome, thoracic spondylosis, lumbar radiculopathy, and long-term medications.

In a December 3, 2014 lumbar MRI scan report, Dr. Bradley A. Ebel, a Board-certified radiologist, found number 1 stable degenerative features, and discogenic and bony narrowing central canal and neural foramina at L4-5 and L5-S1.

In a December 19, 2014 report, Christopher Lutz, a physician's assistant, diagnosed appellant as having displacement of the cervical and lumbar intervertebral disc without myelopathy.

By decision dated February 11, 2015, OWCP finalized the termination of appellant's wage-loss compensation and medical benefits effective that day. It found that the weight of the medical opinion evidence rested with Dr. Doman's July 9, 2014 report, which stated that he no longer had any employment-related residuals or disability.

³ It appears that Dr. Doman inadvertently stated that appellant was not disabled commencing October 30, 2011 rather than November 30, 2011 in response to OWCP's question regarding this matter which identified November 30, 2011 as the start date of appellant's claimed disability.

⁴ In a January 13, 2015 letter, appellant requested that his case under OWCP File No. xxxxxx981 be reopened based on Dr. Doman's report which validated that he still had a herniated disc from his June 17, 1989 work injury. He noted that he did not receive a decision regarding this claim. The Board notes that the case record does not contain a final decision issued by OWCP under File No. xxxxxx981.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of justifying termination or modification of an employee's benefits.⁵ It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁶ The burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁷ The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁸ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.⁹

ANALYSIS

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits as of February 11, 2015. OWCP accepted that appellant sustained a back sprain of the lumbar region while in the performance of duty on October 13, 2011. Appellant received monetary compensation after he stopped work. OWCP terminated his wage-loss compensation and medical benefits based on the medical opinion of Dr. Doman, a second opinion physician.

In a July 9, 2014 report, Dr. Doman reviewed the statement of accepted facts, the results of a September 27, 2011 lumbar MRI scan, and history of the accepted October 13, 2011 employment injury. He provided normal physical examination findings. Dr. Doman found no acute distress or signs of muscular atrophy. He also found symmetric deep tendon reflexes and reported a negative straight leg raising test. Dr. Doman advised that appellant had obvious intentional symptom exaggeration with complaints of excruciating back pain with simple attempts to flex his left and right knee while in the prone position on a nonphysiologic and nonanatomic basis. He stated that intentional exaggeration of his complaints was for purposes of secondary gain. On x-ray examination of the lumbar spine, Dr. Doman found disc space narrowing at L4-S1. He reported that nerve conduction velocity studies of the left lower extremity showed nonspecific F-wave abnormality that was possibly secondary to L5-S1 radiculopathy.

Dr. Doman opined that appellant's accepted work-related lumbar sprain had resolved. He explained that a lumbar strain was a minor soft tissue injury that uniformly resolved in a relatively brief period of time, less than 90 days. Dr. Doman advised that appellant certainly did

⁵ *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁶ *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

⁷ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁸ *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁹ *A.P.*, Docket No. 08-1822 (issued August 5, 2009); *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002).

not sustain a recurrent herniated disc or an aggravation of his preexisting degenerative disc disease as a result of the October 13, 2011 work injury. He explained that a disc injury with herniation was well documented on a September 27, 2011 lumbar MRI scan. Dr. Doman further explained that any increased subjective complaints that appellant had after this injury merely represented the natural history of this preexisting condition. He related that his subjective complaints appeared to be grossly exaggerated for purposes of deceiving him. Dr. Doman opined that there were no residual conditions that resulted from the accepted work injury. He further opined that the requested lumbar fusion at the L4-S1 levels was unequivocally not related to the accepted employment injury based on his rationale stated above. Dr. Doman also advised that appellant was most certainly not disabled for work from November 30, 2011 to April 20, 2012 due to his work-related condition. He explained that any back pain he had would have been the natural sequela in progression of his preexisting lumbar spine degenerative disorder.

The Board finds that Dr. Doman's report represents the weight of the medical evidence and that OWCP properly relied on his report in terminating appellant's wage-loss compensation and medical benefits for the accepted condition on February 11, 2015. Dr. Doman's opinion is based on a proper factual and medical history as he reviewed the statements of accepted facts and appellant's prior medical treatment. He also related his comprehensive examination findings in support of his opinion that appellant no longer had any residuals or disability causally related to the accepted traumatic back sprain of the lumbar region.

The Board finds that the remaining evidence submitted by appellant prior to the termination of his compensation is insufficient to show that he had any remaining work-related residuals or disability. Dr. Tafor's reports dated September 8, 2014 to January 25, 2015 found that appellant had lumbar postlaminectomy syndrome, thoracic spondylosis, and lumbar radiculopathy. However, Dr. Tafor did not provide any opinion stating whether appellant's conditions and disability for work were causally related to the accepted work injury. The Board has held that 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

Similarly, neither Dr. Ebel's December 3, 2014 diagnostic test results nor the laboratory tests dated November 12, 2013 and December 5, 2014 provided an opinion addressing whether appellant had any continuing residuals or disability due to the accepted work injury.¹¹

The December 19, 2014 report from Mr. Lutz, a physician's assistant, has no probative medical value. A physician's assistant is not considered a physician as defined under FECA.¹²

The Board finds that Dr. Doman's opinion that appellant had recovered from the employment injury represents the weight of the medical evidence and the additional medical evidence submitted is insufficient to create a conflict in opinion regarding whether he had

¹⁰ See *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

¹¹ *Id.*

¹² 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t); *George H. Clark*, 56 ECAB 162 (2004).

continuing residuals or disability related to the accepted injury. Therefore, OWCP properly terminated appellant's compensation effective February 11, 2015 based on Dr. Doman's opinion.

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 wage-loss compensation and medical benefits effective February 11, 2015 as he no longer had any residuals or disability causally related to his accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the February 11, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 24, 2015
Washington, DC

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

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

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