



his accepted lower back condition following the termination of compensation benefits on June 20, 2014.

### **FACTUAL HISTORY**

On March 8, 2011 appellant, a 43-year-old environmental maintenance technician, injured his lower back when the chair on which he was sitting slipped from beneath him and he struck the floor. He filed a claim for compensation benefits, which OWCP accepted for lumbosacral sprain. OWCP subsequently accepted the condition of adjustment reaction with physical symptoms. Appellant stopped working on March 11, 2011 and OWCP commenced payment for wage-loss compensation on the supplemental roll.

In a March 17, 2011 report, Dr. Ben Mobo, Board-certified in internal medicine and occupational medicine, stated that appellant had experienced severe lower back pain since the March 8, 2011 employment injury. He advised that he previously sustained a back injury in 2007 that was treated conservatively. Dr. Mobo asserted that appellant likely had musculoskeletal lower back pain, with mild spasm, which constituted an aggravation of his preexisting 2007 injury. He diagnosed lumbosacral strain/sprain. Dr. Mobo advised that appellant was totally impaired and unlikely to attain gainful employment.

In an April 26, 2012 report, Dr. Mobo stated that appellant underwent a magnetic resonance imaging (MRI) scan, the results of which showed a mild L4-5 disc herniation on the left, without significant compromise of the central canal or neural foramina, and mild L5-S1 degenerative disc disease without significant central canal stenosis or neural foraminal stenosis. He opined that appellant was totally impaired and disabled from gainful employment at that time.

In a November 1, 2013 report, Dr. Mobo stated that appellant continued to have complaints of low back pain. He advised that his pain had increased by 30 percent since his previous visit. Appellant described the pain as aching, dull, pulsating, burning, cramping, spasming, and continuous, radiating to the right and left of midline across the lumbar spine; he rated the pain as a seven on a scale of one to ten on average a ten out of ten at worst. Dr. Mobo advised that appellant had increased low back pain with physical activity, especially when standing for long periods of time. He stated that he was currently not working and remained on disability.

Dr. Mobo diagnosed chronic lumbosacral sprain, lumbar intervertebral disc disorder and L5-S1 discogenic pain. He asserted that appellant had a history of L5-S1 disc herniation. Dr. Mobo noted that he had been treating appellant for a significant amount of time and advised that it was readily apparent that he was in constant pain, which affected his daily life activities. He advised that his recent increased, significant bilateral L5-S1 low back pain was consistent with L5-S1 recurrent disc herniation. Dr. Mobo recommended decreased physical activity to reduce appellant's back pain, at which time he would consider a course of physical therapy and a possible referral to a neurologist to consider if he would benefit from a spinal cord stimulator trial. He opined that appellant's current medical condition was directly and causally related to his March 8, 2011 work injury. Dr. Mobo stated that his prognosis was poor and that his impairment/disability was chronic and permanent. He concluded that, within a reasonable

degree of medical certainty, appellant was permanently and totally disabled from any type of gainful employment.

To determine appellant's current condition and ascertain whether he still suffered residuals from his accepted conditions, OWCP referred appellant for a second opinion examination with Dr. Robert J. Smith, Board-certified in orthopedic surgery. In a December 9, 2013 report, Dr. Smith reviewed the medical history and the statement of accepted facts, stated findings on examination and concluded that appellant had no residuals from the March 8, 2011 employment injury. He advised that his clinical examination was benign and that his ongoing symptoms of disabling back pain were difficult to explain given the lack of objective pathology. Dr. Smith stated that appellant's gait and station were normal, with no requirement for aides to ambulation or bracing; his back had no findings of any spasm, atrophy, trigger points or deformity. He advised that his active spinal range of motion was satisfactory and functional without any spasm or rigidity. Dr. Smith asserted that his neurologic examination was completely normal from an objective standpoint, that he was fully recovered from the March 8, 2011 work injury and at maximum medical improvement with no need for additional treatment or testing. He opined that the only accepted condition in this case was a lumbar sprain, which, based on the current clinical examination, had completely recovered without discernable objective residuals. Dr. Smith concluded that there was no identifiable, ongoing pathology from the March 8, 2011 work incident which would prevent him from returning to regular, full-time duty.

On January 30 and February 6, 2014 OWCP issued notices of proposed termination of compensation to appellant. It found that the weight of the medical evidence, as represented by the opinion of Dr. Smith, the second opinion physician, established that his accepted, lumbosacral sprain/strain had resolved and that he had no residuals from the March 8, 2011 work injury. OWCP allowed appellant 30 days to submit additional evidence or legal argument in opposition to the proposed termination.

In a February 27, 2014 report, Dr. Mobo essentially reiterated his previous findings and conclusions. In an April 16, 2014 report, Dr. Mobo advised that appellant's condition was stable, had "plateaued," and that it was no longer necessary to treat him on a regular basis.

By decision dated June 20, 2014, OWCP terminated appellant's wage-loss and medical benefits, pertaining to the accepted lumbosacral strain, finding that Dr. Smith's referral opinion represented the weight of the medical evidence. It also related in this decision that it had accepted the condition of adjustment reaction with physical symptoms. Appellant continued to receive wage-loss and medical benefits for this condition.

By letter dated June 23, 2014, appellant, through counsel, requested an oral hearing, which was held before an OWCP hearing representative on February 12, 2015.<sup>3</sup>

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<sup>3</sup> Appellant submitted a number of progress notes and narrative reports from Dr. Harry A. Doyle, a Board-certified forensic psychiatrist, dating from June 2014. Dr. Doyle reviewed the medical evidence of record and his own mental status examination findings. He related that appellant had moderate anxiety and depression, as well as somatic preoccupation. Dr. Doyle diagnosed chronic pain disorder, chronic adjustment disorder, and lumbosacral joint/ligament sprain, right sciatica. He concluded that appellant remained totally disabled from his employment due to a combination of residual physical and psychiatric impairments.

By decision dated May 7, 2015, an OWCP hearing representative affirmed the June 20, 2014 termination decision. She noted that counsel had confirmed during the hearing that appellant continued to receive wage-loss and medical benefits for his accepted psychiatric condition.

### **LEGAL PRECEDENT -- ISSUE 1**

Once OWCP accepts a claim and pays compensation, it has the burden of justifying termination or modification of an employee's benefits.<sup>4</sup> It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.<sup>5</sup> The burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>6</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.<sup>7</sup> 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.<sup>8</sup>

### **ANALYSIS -- ISSUE 1**

In this case, OWCP accepted that appellant sustained lumbosacral strain when he fell from a chair at work on March 8, 2011 and that this injury caused disability. It based its decision to terminate appellant's wage-loss and medical benefits, for the accepted condition of lumbosacral strain, on the opinion of Dr. Smith, the referral physician. The Board finds that OWCP met its burden of proof to terminate wage-loss compensation and medical benefits as the weight of the medical evidence establishes that appellant no longer has residuals of the accepted lumbosacral strain.

OWCP in its June 20, 2014 decision relied on the December 9, 2013 report of Dr. Smith, the referral examiner, to find that appellant's accepted lumbar strain condition had ceased and that he no longer had any residuals from this condition. Dr. Smith asserted that his neurologic examination was completely normal from an objective standpoint and that he had fully recovered from the March 8, 2011 work injury, with no need for additional treatment or testing. He opined that the only accepted lower back condition in this case was a lumbar sprain, which, based on the current clinical examination, had completely recovered without discernable objective residuals; he advised that his ongoing symptoms of disabling back pain were difficult to explain given the lack of objective pathology.

Appellant's treating physician, Dr. Mobo, diagnosed chronic lumbosacral sprain and lumbar intervertebral disc disorder. He stated in his November 1, 2013 report and focused on the

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<sup>4</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989).

<sup>5</sup> *See J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

<sup>6</sup> *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

<sup>7</sup> *A.P.*, Docket No. 08-1822 (issued August 5, 2009); *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002).

<sup>8</sup> *See A.O.*, Docket No. 15-995 (issued September 11, 2015).

fact that appellant had a history of L5-S1 disc herniation and that his recent increased, significant L5-S1 low back pain was consistent with L5-S1 recurrent disc herniation, which was directly and causally related to his March 8, 2011 work injury; as a result appellant was permanently and totally disabled from any type of gainful employment. OWCP, however, has never accepted any condition other than lumbosacral sprain/strain.

The Board finds that Dr. Smith's referral opinion, which focused on whether appellant continued to have residuals from his accepted lumbar sprain/strain condition, the only accepted lower back condition in this case, established that appellant was no longer disabled and had no residuals from his accepted lumbar sprain/strain condition. OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, which were paid based upon the accepted condition. Dr. Smith's opinion is based upon current examination findings and sufficiently probative, rationalized, and based upon a proper factual background. Therefore, OWCP properly found that Dr. Smith's referral opinion established that appellant no longer had residuals of the accepted lumbosacral sprain.

### **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.<sup>9</sup>

### **ANALYSIS -- ISSUE 2**

Appellant must establish that he is still entitled to compensation for continuing disability due to the accepted employment injury based on the medical evidence of record. To meet his burden of proof, appellant submitted reports from Dr. Mobo to establish that he had a herniated disc condition causally related to the accepted injury, which caused disability.

Dr. Mobo's opinion that appellant had a lumbar disc herniation caused by the March 8, 2011 work injury, is not sufficiently rationalized for expansion of the claim. His initial report of March 17, 2011 only diagnosed lumbosacral strain/sprain. Dr. Mobo has never offered a fully rationalized opinion explaining how appellant would have sustained a herniated disc from falling off his chair on March 8, 2011. This explanation is especially important given that appellant had a previous back injury in 2007. A claimant has the burden of establishing by the weight of the reliable, probative, and substantial evidence that a claimed medical condition was caused by the employment incident. The opinion of the physician must be based on a complete factual and medical background, 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 compensable employment incident.<sup>10</sup>

On appeal, counsel contends that OWCP erred by crediting the opinion of Dr. Smith, the referral physician. He asserts that Dr. Mobo's opinion was entitled to greater weight than that of Dr. Smith because he provided a more accurate description of the mechanism of injury, in addition to physical findings based on his examination of appellant and findings consistent with

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<sup>9</sup> *John F. Glynn*, 53 ECAB 562 (2002).

<sup>10</sup> *See T.H.*, 59 ECAB 388 (2008).

MRI scan results; counsel also asserts that Dr. Smith did not actually physically examine appellant. Counsel further contends that Dr. Smith's December 9, 2013 report was lacking in rationale and that Dr. Mobo provided a more detailed and comprehensive opinion regarding appellant's current condition. The Board does not accept counsel's argument. Contrary to counsel's contention, Dr. Smith performed a thorough physical examination of appellant and provided findings based on his examination. As noted above, Dr. Smith's opinion was probative and well rationalized.

Appellant did not provide a probative medical opinion as to whether he was disabled or currently required medical treatment due to an alleged employment-related herniated lumbar disc condition. For the reasons discussed above, appellant did not meet his burden of proof. Thus the Board will affirm the hearing representative's May 7, 2015 decision.

**CONCLUSION**

The Board finds that OWCP met its burden of proof to terminate appellant's compensation benefits, for the accepted lumbosacral strain as of June 20, 2014. The Board further finds that appellant has not met his burden to establish continuing employment-related disability.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 7, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 21, 2015  
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board