

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

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D.C., Appellant )

and )

DEPARTMENT OF LABOR, EMPLOYMENT )  
& TRAINING ADMINISTRATION, )  
Clearfield, UT, Employer )

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**Docket No. 15-1485  
Issued: October 7, 2015**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On July 13, 2015 appellant filed a timely appeal of a May 14, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 met its burden of proof to terminate appellant's wage-loss benefits as of May 14, 2015.

**FACTUAL HISTORY**

On July 23, 2013 appellant, an 18-year-old training apprentice with the Job Corps program, sustained a broken jaw when a fellow training apprentice punched him. He filed a

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

claim for benefits on July 24, 2013, which OWCP accepted for fractured jaw. Appellant stopped work on July 23, 2013 and OWCP commenced payment for wage-loss compensation on the periodic rolls.

On August 1, 2013 Dr. Armando A. Gama, an oral and maxillofacial surgeon, reported that appellant underwent surgery on that date. The procedure was to repair moderately displaced fractures of the left angle and right parasymphysis of the mandible. It required an open reduction and internal fixation of the left angle and right parasymphysis of the mandible, placement of Erich arch bars and intermaxillary fixation.

Dr. Gama reported in a progress note dated November 25, 2013 that he had examined appellant on that date and he recommended another procedure for debridement of the fracture and the removal of hardware. He noted that appellant was apprehensive about undergoing a second surgery. In another progress note dated February 19, 2014, Dr. Gama related that appellant had returned for treatment on that date. At that visit they discussed the need to achieve a bony union of the fracture, but that appellant desired to delay further treatment.

To determine appellant's current condition and whether he continued to suffer with residuals from his accepted fractured jaw, OWCP referred appellant for a second opinion examination by Dr. Charles W. Mason, a specialist in orthodontics and dentofacial orthopedics. In an October 21, 2014 report, Dr. Mason reviewed the medical history and the statement of accepted facts. He noted findings on examination, and advised that appellant continued to experience pain. Dr. Mason stated that orthodontic treatment would not address appellant's chief complaint, noting that his pain was related to a dental or skeletal issue which could be related to his previous mandibular fracture. He advised that an x-ray taken on October 21, 2014, revealed a mild radiolucency at the apex of tooth number 17; this appeared to communicate with a thin radiolucency running all the way to the mandibular border. Dr. Mason determined that these findings indicated that the area of the fracture might not be fully healed and were consistent with the pain appellant was experiencing.

Dr. Mason opined that appellant needed to undergo further diagnostic tests by a dentist and an oral surgeon to evaluate his continuing pain. He noted that the full differential diagnosis of tooth number 27 was outside the scope of his specialty and that it was possible that the jaw had not fully healed, although it was functional. Dr. Mason repeated his recommendation that appellant be evaluated further by an oral surgeon. He concluded that appellant did not appear to be limited in working in his previous job. Appellant's chief complaint and his condition did not prevent him from doing his employment duties.

On April 8, 2015 OWCP issued a notice of proposed termination of compensation to appellant. It found that the weight of the medical evidence, as represented by the opinion of Dr. Mason, the second opinion physician, established that he could perform his date-of-injury job without limitations. OWCP allowed appellant 30 days to submit additional evidence or legal argument in opposition to the proposed termination.

Appellant submitted an April 21, 2015 form report from Dr. Jeanne H. Williams, a family practitioner, indicating that he had been examined in an emergency department on that date for

jaw pain and tooth decay. Also submitted was an April 25, 2015 letter from an oral surgeon's office advising that he had been examined on that date by Dr. Gama.

By decision dated May 14, 2015, OWCP terminated appellant's compensation for wage loss. It found Dr. Mason's referral opinion represented the weight of the medical evidence. OWCP stated that this decision did not terminate appellant's medical benefits, which remained open.

### **LEGAL PRECEDENT**

Once OWCP accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.<sup>2</sup> Having determined that an employee has a disability causally related to his federal employment, OWCP may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.<sup>3</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.<sup>4</sup>

### **ANALYSIS**

OWCP based its decision to terminate appellant's wage-loss compensation on the opinion of Dr. Mason, an OWCP referral physician. It did not terminate appellant's medical benefits, and appellant remains entitled to medical treatment for the accepted condition. The Board finds that OWCP correctly terminated appellant's wage-loss benefits.

OWCP in its May 14, 2015 decision relied on the October report of Dr. Mason, the referral examiner, to find that appellant's accepted jaw condition no longer disabled him. Dr. Mason found that appellant still had pain related to a dental or skeletal issue which might be related to his previous mandibular fracture. An October 21, 2014 radiograph showed that the area of the fracture might not be fully healed. Dr. Mason recommended that appellant undergo further diagnostic tests by a dentist and an oral surgeon. He opined, however, that appellant appeared not to have any limitations on working in his previous job.

The Board finds that Dr. Mason's referral opinion established that appellant was no longer disabled by the effects of his accepted fractured jaw. Dr. Mason's opinion is sufficiently probative, rationalized, and based upon a proper factual background.

Dr. Gama, appellant's treating physician, did not provide an opinion regarding appellant's disability status as of May 14, 2015, nor did Dr. Williams address appellant's disability status in her April 21, 2015 report. Their reports are therefore of little probative value regarding appellant's disability status.<sup>5</sup>

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<sup>2</sup> *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

<sup>3</sup> *I.J.*, 59 ECAB 408 (2008).

<sup>4</sup> *Furman G. Peake*, 41 ECAB 361 (1990).

<sup>5</sup> *See L.W.*, Docket No. 14-0559 (issued July 24, 2015).

The Board affirms OWCP's May 14, 2015 decision.

**CONCLUSION**

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss benefits as of May 14, 2015.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 14, 2015 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: October 7, 2015  
Washington, DC

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

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

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