

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

G.I., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Oakland, CA, Employer**

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**Docket No. 14-1857
Issued: September 9, 2015**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 19, 2014 appellant filed a timely appeal from a May 27, 2014 merit decision and a July 18, 2014 nonmerit 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.

ISSUES

The issues are: (1) whether OWCP met its burden of proof to terminate appellant's compensation and medical benefits effective May 21, 2014 as she no longer had any residuals causally related to her accepted lumbar condition; and (2) whether it properly denied appellant's request for a review of the written record as untimely filed.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On March 7, 1998 appellant, then a 51-year-old distribution clerk, filed an occupational disease claim alleging that she developed pain in her lower back and left leg from repetitively lifting, moving, and sweeping mail. She first became aware of her condition on January 6, 1998 and realized that it resulted from her employment on February 3, 1998. OWCP accepted appellant's claim for low back strain with left-sided radiculopathy. Appellant stopped work on January 6, 1998 and returned to limited duty on March 4, 1998. OWCP paid compensation benefits.²

On January 11, 2000 OWCP granted appellant a schedule award for three percent of the left lower extremity. The award ran for 8.64 weeks from March 4 to May 3, 1999.

Appellant retired from the employing establishment in 2001. She continued to receive medical treatment from her treating physician, Dr. Robert A. Fox, a Board-certified neurologist. OWCP paid medical benefits.

On November 22, 2013 OWCP referred appellant, together with a statement of accepted facts (SOAF) and the medical record, to Dr. John H. Welborn, Jr., a Board-certified orthopedic surgeon, for a second opinion examination to determine whether appellant continued to suffer residuals of her accepted injuries and whether she required further medical treatment. In a January 13, 2014 report, Dr. Welborn reviewed appellant's history, including the SOAF and medical records. He noted that OWCP accepted her January 6, 1998 claim for low back strain with left-sided radiculopathy. Dr. Welborn reported that appellant began to work for the employing establishment in 1968, worked modified duty beginning 1998, and retired in 2001. He also stated that she had a history of cervical strain from a motor vehicle accident in 1988, left leg pain since her stroke in 1993, and low back pain as a result of work-related injuries in 1976, 1983, and 1985. Dr. Welborn noted that appellant was diagnosed with preexisting spondylosis at T11-12.

Upon examination of appellant's lumbar spine, Dr. Welborn observed normal palpation and tenderness. Range of motion was forward flexion to 90 degrees, hyperextension to 0 degrees, and right and left lateral bend to 30 degrees. Dr. Welborn reported that straight leg raise testing was negative on the right and left. He related appellant's continued complaints of low back and left leg pain. Dr. Welborn diagnosed back strain and chronic low back pain. He stated that these findings were established by appellant's subjective symptoms only as there was no recent diagnostic testing. Dr. Welborn reported that she did not have any symptoms that were consistent with radiculopathy but she did have symptoms consistent with a stroke. He opined that appellant's low back pain was not medically connected to the accepted 1998 work-related injury. Dr. Welborn concluded that appellant no longer suffered residuals of the work-related injury and that she no longer needed further medical treatment.

On April 3, 2014 OWCP proposed to terminate appellant's compensation and medical benefits based on Dr. Welborn's January 13, 2014 second opinion report. It determined that the

² The record reveals that appellant has two previously accepted claims for left wrist tendinitis (File No. xxxxxx977) and bilateral wrist tendinitis (File No. xxxxxx140).

weight of the medical evidence rested with Dr. Welborn who determined that appellant's employment-related injuries had resolved and that she no longer needed further medical treatment for her accepted conditions.

Appellant submitted further reports from Dr. Fox dated February 19, 2013 to March 11, 2014. Dr. Fox stated that he conducted a follow-up examination of appellant for a January 6, 1998 work-related injury to her neck and upper and lower extremities. He related that she continued to complain of pain in her upper and lower extremities. Dr. Fox reported that, objectively, appellant had positive straight leg raising bilaterally and altered sensations in both her hands, and distal lower extremities. He stated that she was capable of maintaining her activities of daily living with medication and that she benefited from independent aqua therapy, and land-based exercises. Along with the reports, appellant included a narrative statement describing her complaints of continued left side, lower back, and bilateral hand pain, the medication she was taking, and her various communications with OWCP.

In a letter dated April 26, 2014, appellant stated that she sustained a number of injuries while in the performance of her duties that were permanent and stationary. She described in detail her January 6, 1998 work-related injury and the medical treatment she received. Appellant reported that in letters addressed to the claims examiner dated June 14 and 22, 2004, and June 30 and 13, 2005 why it was medically necessary for her to continue to receive pool therapy. She explained that the pool therapy helped to reduce her lower back pain and mobility of all her joints. Appellant submitted a January 13, 1999 modified job offer and a December 19, 2006 report by Dr. Fox.

By decision dated May 27, 2014, OWCP finalized the termination of appellant's compensation and medical benefits effective May 21, 2014. It determined that the weight of the medical evidence rested with Dr. Welborn's January 13, 2014 report which determined that appellant's employment-related injuries had resolved and that she no longer suffered residuals of her accepted employment conditions.

In an appeal request form postmarked June 27, 2014 and received by OWCP on July 1, 2014, appellant requested a review of the written record. She resubmitted the April 26, 2014 letter; various claims for disability compensation dated January 6 to July 13, 1998, July 18 to August 18, 2000, and October 17 to November 16, 2001; the January 6, 1998 occupational disease claim form; a statement of accepted facts dated August 12, 1998; and various reports from Dr. Fox dated April 21, 1998 to December 13, 2013.

In a decision dated July 18, 2014, OWCP denied appellant's request for a review of the written record. It noted that its last merit decision was issued on May 27, 2014, and her request for a review of the written record was postmarked June 27, 2014. OWCP further indicated that it had, in its discretion, carefully considered appellant's request for a review of the written record and had determined that the issue in this case could equally well be addressed by requesting reconsideration from the district office and submitting evidence not previously considered which established that she continued to suffer residuals of her accepted conditions.

LEGAL PRECEDENT -- ISSUE 1

According to FECA, once OWCP accepts a claim and pays compensation, it has the burden of justifying termination or modification of an employee's benefits.³ OWCP may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.⁴ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵ The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁶ 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.⁷

ANALYSIS -- ISSUE 1

OWCP accepted appellant's January 6, 1998 occupational disease claim for lower back strain with left-sided radiculopathy. It paid benefits for medical treatment. By decision dated May 27, 2014, OWCP terminated appellant's entitlement to compensation benefits based on the January 13, 2014 second opinion report of Dr. Welborn who determined that appellant's accepted conditions had resolved and that she was no longer in need of further medical treatment.

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's disability compensation and medical benefits because Dr. Welborn's opinion does not establish that her work-related injuries had resolved and that she was no longer in need of medical treatment for her work-related injuries.

OWCP referred appellant's claim to Dr. Welborn for a second opinion examination to determine whether appellant continued to suffer residuals of her accepted injuries and the necessity of her medical treatment. In a January 13, 2014 report, Dr. Welborn provided an accurate history of appellant's work-related and nonwork-related injuries and noted that OWCP accepted appellant's January 6, 1998 claim for low back strain with left-sided radiculopathy. Upon examination of appellant's lumbar spine, he observed normal palpation and tenderness. Range of motion was forward flexion to 90 degrees, hyperextension to 0 degrees, and right and left lateral bend to 30 degrees. Dr. Welborn reported that straight leg raise testing was negative on the right and left. He diagnosed back strain and chronic low back pain. Dr. Welborn stated that appellant did not have any symptoms that were consistent with a radiculopathy, but she did

³ *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁴ *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

⁵ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁶ *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005); *A.P.*, Docket No. 08-1822 (issued August 5, 2009).

⁷ *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002); *A.P.*, *id.*

have symptoms consistent with a stroke. He concluded that appellant no longer suffered residuals of the January 6, 1998 employment injury and that further medical treatment would not improve her condition.

The Board finds that Dr. Welborn's opinion lacks probative value to establish that appellant no longer suffered residuals of her low back strain with left-sided radiculopathy. Dr. Welborn opined that appellant's accepted conditions had resolved and that her current low back and left lower extremity pain was a result of her 1993 stroke. He did not, however, provide any medical rationale for his conclusion. Dr. Welborn failed to explain how appellant's current symptoms were associated with her stroke and not her accepted back condition. The Board has found that medical conclusions unsupported by medical rationale are of little probative value.⁸ Because Dr. Welborn did not provide a well-rationalized medical opinion that appellant's low back strain and left-sided radiculopathy had resolved, his report is insufficient to justify termination of her compensation benefits.⁹

The Board notes that appellant submitted similar reports from Dr. Fox dated February 19, 2013 to March 11, 2014. Dr. Fox related that appellant continued to complain of pain in her upper and lower extremities. He reported that objectively appellant had positive straight leg raising bilaterally and altered sensations in both her hands and distal lower extremities. Dr. Fox stated that appellant was capable of maintaining her activities of daily living with medication and that she benefited from independent aqua therapy and land-based exercises.

In assessing medical evidence, the weight of medical evidence is determined by its reliability, its probative value, and its convincing quality. The factors that comprise the evaluation of medical opinion evidence include the opportunity for and thoroughness of physical examination, the accuracy or completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.¹⁰ In this case, the Board finds that the medical evidence and rationale supporting Dr. Welborn's opinion is lacking. Accordingly, Dr. Welborn's opinion has diminished probative value and does not constitute the weight of medical opinion in determining the extent of appellant's employment-related injuries and need for further medical treatment. Moreover, Dr. Fox has been appellant's treating physician and has presented medical opinions that appellant continued to suffer residuals of her low back condition and required medical treatment.

For these reasons, the Board reverses OWCP's May 27, 2014 decision and remands the case for proper reinstatement of compensation benefits.

⁸ *J.F.*, Docket No. 09-1061 (issued November 7, 2009); *A.D.*, 58 ECAB 149 (2006).

⁹ *See V.G.*, Docket No. 14-1571 (issued November 25, 2014).

¹⁰ *Nicolette R. Kelstrom*, 54 ECAB 570 (2003); *Anna M. Delaney*, 53 ECAB 384 (2002).

CONCLUSION

The Board finds that OWCP did not meet its burden of proof to justify termination of appellant's compensation benefits effective May 21, 2014. In light of the Board's disposition on the first issue, the second issue is moot.

ORDER

IT IS HEREBY ORDERED THAT the May 27, 2014 decision of the Office of Workers' Compensation Programs is reversed.

Issued: September 9, 2015
Washington, DC

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

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

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