

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

N.C., Appellant)
and) Docket No. 15-0639
DEPARTMENT OF THE ARMY, U.S. ARMY) Issued: January 13, 2016
RESERVE, Barling, AR, Employer)

)

Appearances: Case Submitted on the Record
Appellant, pro se
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On January 26, 2015 appellant filed a timely appeal from a December 11, 2014 merit 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.

ISSUE

The issue is whether OWCP has met its burden of proof to terminate appellant's compensation for wage-loss and medical benefits.

FACTUAL HISTORY

On January 6, 2000 appellant, a 38-year-old heavy mobile equipment repairer, suffered a traumatic injury in the performance of duty when a hydraulic jack rolled out from under a 400-pound wheel, causing an injury to his back. OWCP accepted his claim for lumbosacral

¹ 5 U.S.C. § 8101 *et seq.*

sprain and later expanded the claim to include lumbar disc displacement at L4-5 without myelopathy. Appellant received compensation for wage loss on the periodic rolls.²

OWCP referred appellant over the years to second opinion physicians to determine appellant's work capacity. It subsequently found that a conflict in opinion arose between Dr. John A. Sazy, the attending orthopedic surgeon, and Dr. Melburn K. Huebner, a second opinion Board-certified orthopedic surgeon, as to whether appellant had any ongoing residuals of his accepted conditions.

To resolve whether residuals of the work injury had ceased, OWCP referred appellant, together with the medical record and a statement of accepted facts, to Dr. Stephen J. Ringel, a Board-certified orthopedic surgeon, for an impartial medical evaluation. Dr. Ringel examined appellant on April 22, 2014. He related appellant's history of injury, reviewed appellant's medical record, noted appellant's complaints, and described his findings on physical examination and reviewed appellant's medical record.

Dr. Ringel explained that the January 6, 2000 work injury would be expected, at most, to have resulted in a lumbosacral strain/sprain or contusion of the lower back. This should have resolved within one to two months at most. There was never any objective evidence of significant injury other than the mentioned strain/sprain or contusion. Imaging studies demonstrated only degenerative conditions that did not result from the January 6, 2000 work injury. EMG and nerve conduction studies similarly did not show any evidence of radiculopathy. Therefore, in the normal course of events, no further treatment for the January 6, 2000 work injury would be indicated. Dr. Ringel observed that significant pathology would not explain the lapse in treatment from 2001 to 2010. There was no current objective evidence on physical examination of the January 6, 2000 lumbosacral sprain or lumbar disc displacement without myelopathy. Although imaging studies might show degenerative disc disease, Dr. Ringel believed that this was only a manifestation of the normal aging process with the majority of individuals having similar findings without symptoms. "The symptoms that [appellant] is experiencing, as well as the [imaging studies], in my considered opinion, are more likely than not attributable to normal disease of life and the aging process and not to the incident in question."

On May 13, 2014 OWCP advised appellant of its intention to terminate wage-loss and medical benefits.

An imaging study obtained on April 14, 2014 noted that appellant had back pain on and off for 14 years. It was worse for the past month following dirt shoveling. The study revealed mild-to-moderate canal stenosis at L2-3 and L3-4, and moderate stenosis at L4-5. Lateral recess stenosis was seen on the right at L5-S1. There was fairly severe foraminal narrowing at L5-S1

² Effective October 4, 2003, OWCP reduced appellant's compensation for wage loss to reflect his capacity to earn wages in the constructed position of mail clerk. On October 12, 2010 appellant underwent a physical performance evaluation that tested his strength, cardiovascular endurance, and range of motion. Therapeutic exercise was recommended to increase strength, stability, range of motion, and endurance of the lumbar spine and supporting areas to aid appellant in activities of daily living and work-related activities. Appellant's prognosis was deemed poor.

on the right, with mild-to-moderate narrowing bilaterally at L3-4 and L4-5 and minimal narrowing at L2-3. A fairly moderate scoliotic concavity to the right was present.

The record indicates that appellant had been employed with Titan Lansing Transloading as a loader since April 12, 2013. He was shoveling dirt out of a front-end loader on February 19, 2014 and sustained an injury to his lower back.

Appellant alleged that the April 14, 2014 imaging showed severe damage to his back/spine that was a result of his January 6, 2000 work injury. He added that he never had any back problems until that accident.

In a decision dated June 19, 2014, OWCP terminated appellant's wage-loss compensation and medical benefits. It found that the weight of the medical evidence rested with the referee opinion of Dr. Ringel. OWCP further found that the results of the recent imaging study, together with appellant's statement, were insufficient to alter the proposed termination.

Appellant requested reconsideration. He submitted a June 11, 2014 evaluation by Dr. Richard B. Lawrence, a specialist in family medicine designated by the Texas Department of Insurance, Division of Workers' Compensation. Dr. Lawrence had been asked to determine appellant's maximum medical improvement date, impairment rating, and extent of injury. He noted that on February 19, 2014 appellant was shoveling dirt out of a front-end loader and sustained an injury to his lower back. Dr. Lawrence diagnosed lumbar strain, disc space narrowing and disc bulging at L4-5 and L5-S1, right L5-S1 radiculopathy, exacerbation of lumbar canal stenosis, and exacerbation of lateral recess stenosis at L5-S1. He found that appellant had not reached maximum medical improvement.

By decision dated December 11, 2014, OWCP reviewed the merits of appellant's case and denied modification of its prior decision.

On appeal, appellant describes the long painful road he was on and asks the Board to restore his benefits. He objects to the finding that his back problem stems from smoking. Appellant notes that he now has sciatica and numbness in both his feet.

LEGAL PRECEDENT

FECA pays compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.³ Once OWCP accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.⁴ After it has determined that an employee has disability causally related to federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.⁵

³ 5 U.S.C. § 8102(a).

⁴ *Harold S. McGough*, 36 ECAB 332 (1984).

⁵ *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.⁶ When there exist opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁷

ANALYSIS

Appellant sustained a traumatic work injury on January 6, 2000 which OWCP accepted for the conditions of lumbosacral sprain and lumbar disc displacement without myelopathy. He received medical benefits and compensation for wage loss attributable to these two medical conditions. As OWCP has terminated medical benefits and compensation for wage loss, it bears the burden of establishing that the accepted lumbosacral sprain and lumbar disc displacement no longer are disabling or require medical treatment.

To resolve a conflict of medical evidence between Dr. Sazy, the attending orthopedic surgeon, and Dr. Huebner, the second opinion orthopedic surgeon, on whether residuals of the January 6, 2000 work injury had ceased, OWCP referred appellant to Dr. Ringel an impartial medical specialist. OWCP provided Dr. Ringel with appellant's medical record and a statement of accepted facts so he could base his opinion on a proper medical and factual history. After reviewing appellant's history, complaints, findings on physical examination, and medical record, it was Dr. Ringel's opinion that the January 6, 2000 work injury had resolved.

Dr. Ringel supported his opinion with sound medical reasoning. He observed that there was never any objective evidence of significant injury, apart from lumbosacral strain/sprain, or contusion of the lower back. Imaging studies demonstrated degenerative conditions that were only a manifestation of the normal aging process and were not accepted by OWCP. Appellant's lapse in treatment from 2001 to 2010 supported the lack of any significant pathology. There was currently no objective evidence on physical examination of the accepted lumbosacral sprain or lumbar disc displacement. The accepted strain should have resolved within one to two months. As the accepted lumbosacral strain should have resolved and there currently was no objective evidence of the two accepted medical conditions, no further treatment for the January 6, 2000 work injury was indicated.

The findings of the April 14, 2014 imaging study -- stenosis, foraminal narrowing, and scoliotic concavity -- are not sufficient to establish that appellant continues to suffer from the lumbosacral sprain or lumbar disc displacement he suffered on January 6, 2000.

The Board finds that the opinion of Dr. Ringel is based on a proper factual and medical history, is sufficiently well reasoned, and must be accorded special weight in resolving whether the January 6, 2000 work injury has resolved. As the weight of the medical opinion evidence establishes that appellant no longer suffers from the accepted lumbosacral sprain or lumbar disc

⁶ 5 U.S.C. § 8123(a).

⁷ *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

displacement, the Board finds that OWCP has met its burden of proof to justify the termination of compensation for those two medical conditions. The Board will therefore affirm OWCP's December 11, 2014 decision.

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 the weight of the medical opinion evidence establishes that the lumbosacral sprain and lumbar disc displacement caused by appellant's January 6, 2000 work injury have resolved. OWCP has met its burden to justify the termination of his medical benefits and compensation for wage loss.

ORDER

IT IS HEREBY ORDERED THAT the December 11, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 13, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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