

ISSUE

The issue is whether appellant has established that he has continuing employment-related residuals or disability commencing September 16, 2009 causally related to the May 19, 2006 employment injury.

On appeal appellant, through counsel, argues that OWCP's decision is contrary to fact and law.

FACTUAL HISTORY

This case has previously been before the Board. The relevant facts are as follows.

On May 20, 2006 appellant, then a 57-year-old city letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on May 19, 2006 he suffered from head and neck pain after a vehicle door hit his head. He stopped work on May 19, 2006 and did not return. On August 1, 2006 OWCP accepted appellant's claim for cervical and lumbar sprain.³

OWCP terminated appellant's wage-loss and medical benefits on September 16, 2009, finding that the opinion of the impartial medical examiner, Dr. Olumuyia Paul, a Board-certified orthopedic surgeon, constituted the weight of the medical opinion. On September 15, 2010 appellant requested reconsideration and submitted additional evidence. OWCP denied modification of the prior decision on October 20, 2011. Appellant appealed to the Board on November 22, 2011. In a decision dated September 10, 2012, the Board affirmed OWCP's termination of appellant's benefits effective September 16, 2009, as the report of Dr. Paul found that appellant had no residuals from his accepted employment-related neck and lumbar strain after that date. The Board further found that the medical evidence was insufficient to overcome the special weight accorded to Dr. Paul and thus, appellant did not establish any continuing employment residuals or disability after September 16, 2009.⁴ Following appellant's July 9, 2013 request for reconsideration, on October 24, 2013 OWCP found that appellant had not established continuing disability after September 16, 2009. On June 16, 2014 the Board affirmed OWCP's October 24, 2013 decision finding that the new evidence submitted by appellant on reconsideration was not sufficient to establish continuing employment-related residuals on or after September 16, 2009.⁵

Appellant again requested that OWCP reconsider his claim on March 26, 2015. In support of this request for reconsideration he submitted a report from Dr. Leonid Selya, a Board-certified orthopedic surgeon, dated February 11, 2015. On April 9, 2015 OWCP denied the request for reconsideration as untimely filed and failing to demonstrate clear evidence of error.

³ In Docket No. 09-88 (issued June 3, 2009) (the Board found that OWCP did not meet its burden of proof to terminate appellant's compensation benefits due to a conflict in evidence, and remanded the case for referral of appellant to an appropriate medical specialist to resolve the conflict. The Board further found that appellant was not entitled to a schedule award for permanent impairment to his back).

⁴ Docket No. 12-230 (issued September 10, 2012).

⁵ Docket No. 14-401 (issued June 16, 2014).

Appellant filed another appeal to the Board on May 7, 2015. By decision dated October 8, 2015, the Board found that appellant's request for reconsideration was timely filed. The Board remanded the case for OWCP to apply the proper standard for reviewing a timely reconsideration request.⁶ The facts and circumstances as set forth in the Board's prior decisions are incorporated herein by reference.

Since the last merit review by this Board on June 16, 2014, OWCP received the February 11, 2015 report from Dr. Selya. Dr. Selya noted that appellant continued to complain of pain in his neck, bilateral upper extremities, and had difficulty maintaining balance. He related appellant's allegations that his symptoms started in 2006 when a large door of a truck fell onto his head and he developed progressive pains and neurological symptoms arising from his neck trauma. Dr. Selya diagnosed cervical stenosis, degenerative disc disease at C4-C5, disc syndrome at C5-C6 and C6-C7, and radiculopathies within C5 distribution with impairment of balance. He concluded that appellant was totally disabled. Dr. Selya noted that appellant had no interest in surgery, and that pain management and physical therapy should be considered by appellant.

By decision dated April 11, 2016, OWCP denied modification of its prior decision, finding that the new medical evidence was insufficient to establish continuing disability after September 16, 2009 causally related to the May 19, 2006 employment injury.

LEGAL PRECEDENT

As OWCP met its burden of proof to terminate appellant's compensation benefits, the burden shifted to appellant to establish that he had continuing disability causally related to his accepted employment injury.⁷ To establish causal relationship between the claimed disability and the employment injury, appellant must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship.⁸

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between appellant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of appellant, 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 employment factors identified by appellant.⁹

⁶ Docket No. 15-1217 (issued October 8, 2015).

⁷ See *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004); *Manuel Gill*, 52 ECAB 282 (2001).

⁸ *Daniel F. O'Donnell, Jr.*, 54 ECAB 456 (2003).

⁹ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

ANALYSIS

The Board finds that appellant has not established continuing disability or residuals of his accepted employment-related lumbar and cervical strains on or after September 16, 2009 causally related to the May 19, 2006 employment injury.

In its June 16, 2015 decision, the Board discussed Dr. Selya's April 24 and August 29, 2013 reports and determined at that time that Dr. Selya provided only conclusory statements on causal relationship without providing medical reasoning or rationale to support his opinion. The Board concluded that these reports were insufficient to establish continuing residuals after September 16, 2009.¹⁰ The Board finds that, with respect to the findings made in its prior decision dated June 9, 2015; those matters are *res judicata* absent any further review by OWCP under section 8128 of FECA.¹¹

The Board finds that Dr. Selya's latest opinion of February 11, 2015 is also insufficient to establish that appellant had residuals from his May 19, 2006 employment injury after September 16, 2009. In fact, the February 11, 2015 report provided no support for appellant's claim of continuing disability due to the accepted employment incident. Dr. Selya failed to provide a rationalized medical opinion that appellant's conditions of cervical stenosis, degenerative disc disease at C4-C5, disc syndrome at C5-C6 and C6-C7, and radiculopathies within C5 distribution with impairment of balance were causally related to appellant's accepted employment injury. His report is therefore of limited probative value as it failed to provide an opinion as to whether appellant continued to have residuals of his accepted work conditions after September 16, 2009.¹²

Accordingly, as the Board finds that appellant failed to submit a rationalized medical report from a physician that established continuing employment-related residuals or disability after September 16, 2009 causally related to his accepted employment injury, appellant has failed to meet his burden of proof.¹³

CONCLUSION

The Board finds that appellant did not establish that he had any continuing employment residuals or disability after September 16, 2009 causally related to the May 19, 2006 employment injury.

¹⁰ Docket No. 14-401 (issued June 16, 2014).

¹¹ See *D.V.*, Docket No. 16-1168 (issued September 13, 2016).

¹² *Jaja K. Asaramo*, 55 ECAB 200 (2004) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship).

¹³ See *L.C.*, Docket No. 15-0877 (issued August 2, 2016).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 11, 2016 is affirmed.

Issued: November 25, 2016
Washington, DC

Christopher J. Godfrey, 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