

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

_____)	
H.L., Appellant)	
)	
and)	Docket No. 17-1969
)	Issued: April 24, 2018
TENNESSEE VALLEY AUTHORITY,)	
DIVISION OF NATURAL RESOURCE)	
OPERATIONS, Norris, TN, Employer)	
_____)	

Appearances: *Case Submitted on the Record*
*Capp P. Taylor, Esq., for the appellant*¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 21, 2017 appellant, through counsel, filed a timely appeal from an August 29, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

ISSUES

The issues are: (1) whether OWCP met its burden of proof to terminate appellant's wage-loss compensation effective November 18, 2016; and (2) whether appellant met his burden of proof to establish continuing disability after November 18, 2016.

FACTUAL HISTORY

On July 20, 1981 appellant, then a 37-year-old biological associate, filed a traumatic injury claim (Form CA-1) alleging that, on July 1, 1981, he sustained lower back and left leg injuries while loading lumber in the performance of duty. He stopped work on the date of injury. OWCP initially accepted the claim for herniated L5-S1 disc, which was subsequently changed to acceptance of lumbar intervertebral disc disorder without myelopathy. Appellant underwent authorized left L5 lumbar discectomy, on August 4, 1981. He returned to limited-duty work as an order clerk on September 9, 1982.

Appellant's August 4, 1981 surgery and subsequent medical care were provided by Dr. William S. Reid, an attending neurosurgeon.

In work restriction evaluation forms (Form OWCP-5) dated April 15 and July 25, 1983, Dr. Edward L. Tauxe, an OWCP referral physician, indicated that appellant was capable of working with restrictions.

By decision dated October 5, 1983, OWCP issued a loss of wage-earning capacity determination reducing appellant's wage-loss compensation based on his actual earnings in the position of order clerk. It found that the restrictions of the order clerk position were within the work restrictions found by Dr. Tauxe. Appellant stopped work again in 1986.

In reports dated March 28, 2012, March 14, 2013, May 14, 2014, and March 19, 2015, Dr. Reid opined that appellant's condition remained unchanged.

On May 8, 2015 OWCP referred appellant to Dr. Nicholas A. Grimaldi, a Board-certified orthopedic surgeon, for a second opinion evaluation on whether appellant's accepted condition had resolved and whether he was capable of returning to his date-of-injury position.

In a June 8, 2015 report, Dr. Grimaldi, based upon a review of the medical evidence, the statement of accepted facts (SOAF), and appellant's physical examination diagnosed L5-S1 degenerative disc disease and subjective radiculitis. He noted appellant was under the care of Dr. Reid and was seen annually. A physical examination revealed negative bilateral straight leg raising, tenderness on palpation of the lower back, and no muscle spasms. Dr. Reid reported that appellant ambulated without any assistance. Based on his review of the position description, he concluded that appellant would be capable of performing his date-of-injury position. Dr. Reid noted the lack of any significant medical treatment since appellant's surgery. He further observed that appellant's L5-S1 arthritis was not severe enough to limit or preclude work. Dr. Grimaldi opined that appellant was unable to perform his date-of-injury position due to appellant's nonwork-related conditions of radiation from prostate cancer treatment and age-related arthritis.

On June 29, 2015 OWCP issued a notice proposing to terminate appellant's wage-loss compensation. It found that Dr. Grimaldi's opinion that appellant could perform his date-of-injury job constituted the weight of the medical opinion evidence.

In a letter dated August 6, 2015, appellant disagreed with the proposal to terminate his wage-loss compensation.

By decision dated August 14, 2015, OWCP finalized the termination of appellant's wage-loss compensation.

On August 24, 2015 OWCP received appellant's request for a telephone hearing before an OWCP hearing representative, which was held on April 7, 2016.

By decision dated June 6, 2016, OWCP's hearing representative reversed the termination of appellant's wage-loss compensation. She found that the SOAF did not contain an adequate description of the physical demands and specific levels of physical activities required for the biological associate position he held on the date of his injury. In addition, the hearing representative found Dr. Grimaldi's opinion was not based upon a review of the entire medical record and he failed to provide sufficient rationale for his opinion. The hearing representative instructed OWCP to provide a revised SOAF and all the medical records to Dr. Grimaldi for review.

Pursuant to the hearing representative's instructions, OWCP revised and updated the SOAF, which it forward to Dr. Grimaldi for review along with a position description for biological associate and relevant medical records not previously provided.

In an updated report dated August 31, 2016, Dr. Grimaldi, based upon a review of the revised SOAF, the additional medical records, and a new physical examination, concluded appellant continued to have residuals from his L5-S1 degenerative disc disease, which correlated with his accepted work injury. He noted x-ray findings confirmed lumbar degenerative disc disease with facet spondylosis. Dr. Grimaldi again concluded that appellant was capable of performing the biological associate duties from his L5-S1 disc disease perspective. In support of his conclusion, he noted that the pain caused by appellant's degenerative disc disease was not severe enough to preclude appellant from performing the physical requirement of the position. Dr. Grimaldi opined that any disability appellant had was due to undergoing prostate cancer radiation. In support of this conclusion, he observed that appellant's symptoms and pain with his feet, legs, and hips developed after undergoing radiation to treat his prostate cancer.

On September 30, 2016 OWCP issued a notice proposing to terminate appellant's wage-loss compensation based upon Dr. Grimaldi's August 31, 2016 opinion that appellant was capable of performing his date-of-injury job as a biological associate.

By decision dated November 18, 2016, OWCP finalized the termination of appellant's wage-loss compensation, effective that date, as it found that he had no disability due to the accepted work condition and was capable of performing the duties of his date-of-injury job as a biological associate.

On November 29, 2016 OWCP received appellant's request for a telephonic hearing before an OWCP hearing representative, which was held on June 15, 2017.

In December 29, 2016 report, Dr. Alan L. Whiton, a treating physician, noted appellant's medical and employment injury history. Appellant reported low back pain since the date of injury, July 1, 1981. Physical examination findings including ambulating without assistance, decreased left lower extremity sensation, L5 spinous process tenderness, normal lumbar spine alignment, tenderness at the sacroiliac joint, tenders on palpation of the left iliolumbar region, and limited active range of motion. Diagnoses included lumbar spinal stenosis and prolapsed lumbar intervertebral disc.

In an August 24, 2017 report, Dr. Whiton reviewed the job description for biological associate and opined that residuals from appellant's accepted work injury precluded his ability to perform this position. He disagreed with Dr. Grimaldi's opinion that appellant's leg problems were due to diabetes as no definitive diagnosis of diabetes had been made by a treating physician. Dr. Whiton observed that examination findings from his December 29, 2016 evaluation including decreased left lower extremity sensation were consistent with L5-S1 degeneration and continuing employment-related residuals.

By decision dated August 29, 2017, the hearing representative affirmed the termination of appellant's wage-loss compensation. She found the medical evidence of record, as represented by Dr. Grimaldi's August 31, 2016 opinion established that appellant no longer had any disability due to his accepted work condition. The hearing representative further found Dr. Whiton failed to provide any medical rationale supporting his opinion that appellant continued to be totally disabled due to the accepted work condition. Thus, she found no conflict in the medical opinion evidence and the weight of the medical evidence rested with the well-rationalized opinion of Dr. Grimaldi. The hearing representative also found that appellant failed to meet his burden of proof to establish disability on and after November 18, 2016.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify modification or termination of an employee's benefits.³ After it has determined that an employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is 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

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

⁴ *I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

⁵ *See J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

ANALYSIS

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation benefits because the medical evidence of record fails to establish that he was no longer disabled from work as a result of his accepted July 1, 1981 employment injury.

Dr. Grimaldi, in August 31, 2016 supplemental report, reviewed appellant's history of injury, an updated SOAF, the biological associate position description. He described appellant's physical examination findings and noted objective residuals based on x-ray findings and physical examination findings. Dr. Grimaldi further explained that, although appellant had residuals from his work injury, they were not disabling to prevent him from performing his usual duties as a biological associate as described in the updated SOAF and position description. He noted that appellant's lumbar pain was not sufficiently disabling and that any disability was due to feet, leg and hip symptoms which appellant developed after undergoing radiation for prostate cancer.

Dr. Grimaldi opined that appellant was able to return to his date-of-injury position. The Board finds that he did not adequately explain with medical rationale why appellant was no longer disabled from this position. Dr. Grimaldi did not provide any rationalized medical explanation as to why he found that appellant still had residuals from his herniated L5-S1 disc and lumbar intervertebral disc disorder without myelopathy, which now correlated with his L5-S1 degenerative disc disease, but that these conditions were not disabling. According to him, appellant's disability from performing the biological associate position was attributable to symptoms and pain in the hips, legs, and knees after undergoing prostate cancer treatment. The Board has held that medical evidence that states a conclusion, but does not offer any rationalized medical explanation is of limited probative value.⁶ Dr. Grimaldi did not provide any medical reasoning, or otherwise detailed analysis, to support his conclusory statements about appellant's ability to perform the duties of a biological associate.⁷ Because he does not support his opinion with medical rationale, his report is insufficient to justify termination of appellant's wage-loss compensation benefits.

The weight of medical evidence is determined by its reliability, its probative value, and its convincing quality.⁸ The factors that, comprise the evaluation of medical opinion evidence include the opportunity for and thoroughness of examination, the employing establishment 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.⁹ In this case, the Board finds that Dr. Grimaldi's opinion is lacking in medical rationale. Accordingly, his opinion has diminished probative value and is not entitled to the weight of medical evidence sufficient to justify termination of appellant's wage-loss compensation.

⁶ *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

⁷ *See A.R.*, Docket No. 12-0443 (issued October 9, 2012).

⁸ *See Nicolette R. Kelstrom*, 54 ECAB 570 (2003).

⁹ *See M.D.*, 59 ECAB 211 (2007).

CONCLUSION

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation, effective November 18, 2016.¹⁰

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 29, 2017 is reversed.

Issued: April 24, 2018
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

¹⁰ In light of the above findings and conclusion, the second issue is rendered moot.