

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

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**J.D., Appellant**

**and**

**GENERAL SERVICES ADMINISTRATION,  
Atlanta, GA, Employer**

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**Docket No. 18-0101  
Issued: August 27, 2018**

*Appearances:*

*Paul H. Felser, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On October 17, 2017 appellant, through counsel, filed a timely appeal from a July 14, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (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 appellant met his burden of proof to establish a consequential emotional condition caused by an accepted March 1, 1990 employment injury; (2) whether OWCP

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<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective May 2, 2016; and (3) whether appellant met his burden of proof to establish continuing employment-related disability after May 2, 2016.

On appeal counsel asserts that the opinion of Dr. Alexander N. Doman, a Board-certified orthopedic surgeon and OWCP referral physician, was not sufficiently reasoned to support a termination of benefits. He continued that the recent opinion of Dr. John F. Keating, a Board-certified orthopedic surgeon, who previously provided an impartial evaluation, superseded that of Dr. Doman. Counsel further asserted that the statement of accepted facts was deficient, noting additional diagnoses had been made which were not properly considered.

### **FACTUAL HISTORY**

On March 12, 1990 a notice of traumatic injury (Form CA-1) was filed alleging that on March 1, 1990 appellant, then a 42-year-old machinist, fell from the top of a six-foot ladder while installing an air conditioning compressor at work. He was transported to a hospital by ambulance where he was admitted for 10 days. Dr. Philip G. Wiltz, Jr., an orthopedic surgeon, noted on a March 10, 1990 discharge summary that on initial physical examination appellant reported hitting his left shoulder and right hip and that he denied any head, abdominal, or chest trauma. Discharge diagnoses were fracture of glenoid of the left shoulder, fracture of the right acetabulum, and cervical and lumbosacral strains. Those conditions and a herniated disc at L5-S1 were accepted by OWCP. Appellant received continuation of pay from March 2 through April 15, 1990. OWCP paid compensation benefits on the daily rolls effective April 16, 1990 and placed him on the periodic compensation rolls in June 1990.

Dr. Wiltz continued to treat appellant. In treatment notes dated December 27, 1990 and January 10, 1991, he indicated that appellant was on active duty with the army reserve.

In January 1991, OWCP referred appellant to Kenneth Hodges for vocational rehabilitation. Mr. Hodges referred appellant to Gary E. Dudley, Ph.D., a clinical psychologist, for a psychological assessment. In an April 22, 1992 report, Dr. Dudley reported results of psychological tests, noting that appellant had an intelligence quotient (IQ) score of 84. He advised that appellant had a considerable depressive reaction to his employment injury. Dr. Dudley diagnosed adjustment disorder with depression, and rule-out organic brain syndrome, not otherwise specified.<sup>3</sup>

Appellant was terminated by the employing establishment effective May 15, 1992, for the physical inability to perform his work duties. His rehabilitation file was closed in October 1992 due to overall poor rehabilitation prognosis.

On October 12, 2001 appellant had a cardiac pacemaker implanted. Dr. Wiltz continued to treat appellant on a regular basis. Records from the Department of Veterans Affairs (VA) in 2008 and 2009 indicated that appellant was 70 percent disabled and was receiving monthly VA

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<sup>3</sup> It is unclear from this record if psychotherapy was authorized. There are no records of any psychotherapy. As noted, *infra*, a psychiatrist reported treating appellant since 1990 for major depression, and appellant reported having therapy at a veterans facility.

benefits for diagnoses of lumbosacral or cervical strain, hypertensive heart disease, hypertensive vascular disease, hearing loss, and tinnitus.

In August 2010, OWCP referred appellant to Dr. Alexander N. Doman, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a September 21, 2010 report, Dr. Doman noted his review of the record and appellant's complaint of lower back pain. He described physical examination findings and noted that x-ray of the right shoulder was normal, and that x-rays of the cervical and lumbar spine showed degenerative disc disease. Electrodiagnostic testing of the left lower extremity was within normal limits. Dr. Doman diagnosed degenerative disc disease of the lumbar spine and opined that appellant's accepted conditions had resolved. He advised that appellant could return to work eight hours daily, noting that he was restricted to light duty for nonwork-related reasons.

OWCP determined that a conflict in medical evidence had been created between Dr. Wiltz and Dr. Doman and referred appellant to Dr. John G. Keating, a Board-certified orthopedic surgeon, for an impartial medical evaluation. In reports dated June 8 and July 13, 2011, Dr. Keating noted his review of the record and appellant's complaints of neck, shoulder, and low back pain, and cardiac problems with pacemaker insertion. He described physical examination findings and opined that appellant's accepted work injuries had not resolved and that he was currently totally disabled.

On January 23, 2012 Dr. Christopher R. Edwards, Board-certified in orthopedic surgery and an associate of Dr. Wiltz, noted seeing appellant for medication refills. He reported that appellant also received medications from the VA. Dr. Edwards advised that, with regard to appellant's workers' compensation case, he had long been at maximum medical improvement, and that there was nothing further recommended. He advised that appellant see his personal physician for medications.

In January 2013, OWCP referred appellant to Dr. Raju Vanapalli, a Board-certified orthopedist, for a second opinion evaluation. In an April 28, 2013 report, Dr. Vanapalli noted his review of the record and appellant's complaint of chronic low back pain. He described physical examination findings and advised that the displacement of lumbar disc at L5-S1 and chronic low back pain had not resolved. Dr. Vanapalli advised that appellant could work light duty for eight hours daily with permanent restrictions of two hours bending and stooping, a 20-pound weight restriction, and three breaks daily. In a supplemental report dated June 17, 2013, Dr. Vanapalli reiterated that appellant was capable of eight hours of light duty daily. He indicated that appellant had no objective neurological deficits, intact sensation in all dermatomes, and upper and lower extremity strength of 5/5.

By letter dated May 29, 2013, OWCP asked Dr. Edwards for an updated medical report. On July 8, 2013 Dr. Edwards responded that Dr. Wiltz had retired, and that appellant had come in on occasion for medication refills. He noted that appellant had been referred to his primary care physician who was treating him. Dr. Edwards again advised that there was really nothing that he needed to do in terms of intervention or treatment. He suggested getting information from appellant's other physicians.

In August 2013, OWCP referred appellant to Feryal Jubran, for vocational rehabilitation. Ms. Jubran referred appellant to Douglas R. Slavin, Ph.D., a clinical psychologist, for a psychological assessment. In a September 26, 2013 report, Dr. Slavin noted that appellant reported seeing a psychiatrist weekly at his local VA hospital and attended a post-traumatic stress disorder (PTSD) group there two times weekly. Appellant reported flashbacks, sleep problems, nightmares, lack of concentration, and memory loss, in addition to back and neck pains. Dr. Slavin noted the results of psychological evaluations and indicated that appellant was agitated and frequently became overwhelmed throughout the evaluation. He noted that appellant's IQ score in 1992 was 84 and had substantially deteriorated to 57. Dr. Slavin opined that appellant's overall pattern of scores was consistent with increasing cognitive and intellectual deterioration which was probably not only the result of a closed head injury, but the increasing anxiety and depression caused by his difficulty in recall and poor memory functioning. He found no evidence of malingering and diagnosed major neurocognitive disorder due to traumatic brain injury with behavioral disturbance and intellectual deficiency/disability. Dr. Slavin concluded that appellant's capacity for retraining or reemployment was poor, indicating that it was highly likely that he would continue to have increasing dementia.

By letter dated October 10, 2013, OWCP informed appellant that his claim would not be expanded to include depression due to the March 1, 1990 employment injury.

In a supplemental report dated November 11, 2013, Dr. Slavin provided reasons for his opinion that appellant could not be rehabilitated or retrained. He indicated that appellant's overall performance was exacerbated by severe post-traumatic symptoms related to his military service and reiterated his diagnoses. On December 12, 2013 Dr. Slavin indicated that, based on the information in the medical records, from the time of appellant's employment injury, he could not attribute appellant's mental status on September 26, 2013, when he examined appellant, to a head injury. He reiterated that he found no evidence of malingering during his evaluation.

On March 7, 2014 Dr. Belinda A. Brown Saddler, Board-certified in family medicine, indicated that she had been treating appellant since 2012 for chronic back pain which she opined continued to be present and disabling.

In reports dated February 27 and March 20, 2014, Dr. E. Clifford Beal, a Board-certified psychiatrist, noted that appellant had been referred to him in 1990 and had been followed since with weekly psychotherapy group sessions and individual therapy and medication. He diagnosed major depression which had persisted since 1990. Dr. Beal indicated that appellant had significant symptoms including depressed mood with occasional crying spells, flashbacks, impaired judgment, insomnia, inability to care for home/family, panic attacks, and anxiety. He opined that appellant was also severely impacted by physical pain and numbness in his back, neck, and legs which also affected his ability to work.<sup>4</sup>

Appellant's vocational rehabilitation was placed in interrupt status in June 2014. OWCP then referred appellant to Dr. Brian Teliho, a Board-certified psychiatrist, for a second opinion evaluation.

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<sup>4</sup> Appellant also submitted medical evidence regarding his cardiac condition.

In a July 14, 2014 report, Dr. Teliho described appellant's history of injury and noted that, in addition to orthopedic injuries, appellant reported increasing problems with depression and confusion following the fall, and that he received psychiatric treatment from Dr. Beal and at the VA where he attended PTSD group therapy. He noted that appellant walked with a cane and became agitated at times. Dr. Teliho described mental status examination findings of depressed mood and impaired cognition. He noted diagnoses of neurocognitive disorder due to traumatic brain injury with behavioral disturbance and major depressive disorder, chronic. Dr. Teliho noted that he had reviewed Dr. Slavin's report and advised that appellant had decreased capacity to function intellectually overall and could not work in any capacity due to neurocognitive deficit and ongoing depression. He concluded that appellant was not a candidate for vocational rehabilitation. In a supplemental report dated November 19, 2014, Dr. Teliho indicated that his conclusions were based on his clinical interview and the psychological evaluation performed by Dr. Slavin. He related that he had not diagnosed traumatic brain injury.

Appellant's vocational rehabilitation services were closed in December 2014.

In January 2016, OWCP again referred appellant to Dr. Doman for a second opinion evaluation.<sup>5</sup> In a February 16, 2016 report, Dr. Doman noted his review of the statement of accepted facts (SOAF) and medical record. He described the employment injury and appellant's complaint of back pain. Physical examination findings included excellent bilateral shoulder range of motion with no shoulder instability, and excellent rotator cuff strength bilaterally. Hip range of motion was excellent bilaterally. Straight leg raising test was negative, and deep tendon reflexes were normal in upper and lower extremities. Dr. Doman indicated that appellant had clear signs of intentional symptom magnification with complaints of significant back pain with simple attempts to flex both knees while in the prone position on a nonphysiologic basis, intentional cogwheeling, and give-way weakness when left lower extremity strength was tested. Grip strength was normal. Dr. Doman noted cervical spine x-ray findings of age-related disc space narrowing at C6-7. X-rays of the right shoulder showed no evidence of glenoid fracture or degenerative changes, and lumbar spine x-rays showed mild age-related disc space narrowing at L5-S1. Pelvis x-ray was normal. Dr. Doman opined that there were no ongoing residuals of the accepted conditions which had long-ago resolved. He indicated that any work-related disability had ceased by March 1, 1992, that appellant had no physical limitations due to the employment injury, and that he could work an eight-hour day with no restrictions.

On March 3, 2016 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits. It found that the weight of the medical evidence rested with the opinion of Dr. Doman who advised that appellant had no residuals of the accepted conditions, and informed him that his case would be held open for 30 days to submit additional evidence.

In correspondence received by OWCP on April 6, 2016, appellant disagreed with the proposed termination. He also forwarded correspondence from the Social Security Administration

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<sup>5</sup> Appellant had submitted no medical evidence since April 4, 2014. The last medical evidence of record was Dr. Teliho's July and November 2014 reports. The SOAF provided Dr. Doman included a description of the employment injury, the accepted conditions, and a notation that appellant claimed he suffered from a traumatic brain injury, but had submitted no medical evidence to support this diagnosis.

(SSA) dated April 5, 2016 indicating that he was receiving disability benefits due to mood disorders.<sup>6</sup>

In treatment notes dated March 11, 2015 to March 22, 2016, Dr. Saddler noted treating appellant for mental health problems including depression, back pain, diabetes, hypertension, and hyperlipidemia. She indicated that appellant had intermittent episodes of moderate aching and cramping back pain that radiated into the left thigh. Dr. Saddler noted that appellant's primary symptoms included dysphoric mood precipitated by emotional stress, and that he continued to be depressed.

Dr. Keating noted seeing appellant on March 21, 2016. He described a chief complaint of left-sided lower back pain and reported that he had previously examined appellant in July 2011. Dr. Keating indicated that he had retained that evaluation along with four inches of records that went into making that evaluation. He related that appellant now reported that he had been released to full duty work. Dr. Keating indicated that he had found appellant permanently disabled in 2011. He noted appellant's past medical history and described a review of systems. Dr. Keating related that he had asked appellant to forward his most recent evaluation, after which he would comment in detail.

In correspondence dated March 31, 2016, Dr. Jean Chin, a Board-certified family physician and associate of Dr. Saddler, advised that appellant had suffered from depression for many years that stemmed from his inability to work due to his employment injury. She noted that he had been under Dr. Beal's care and requested that OWCP accept that appellant's depression was work related and keep his case open until his depression was in remission.

By decision dated April 27, 2016, OWCP finalized the termination of wage-loss compensation and medical benefits, effective May 2, 2016. It reviewed the evidence submitted by appellant, noting that it could find no evidence that Dr. Keating had previously examined appellant. OWCP found the weight of the evidence rested with the opinion of Dr. Doman who opined that appellant's work-related conditions had ceased with no residuals.

In a request postmarked August 17, 2016, appellant requested a hearing with OWCP's Branch of Hearings and Review. By decision dated August 25, 2016, a representative of OWCP's Branch of Hearings and Review denied the request. He found that it was untimely filed as the request was not made within 30 days of its April 27, 2016 decision. OWCP's hearing representative further found that the issue could be addressed by requesting reconsideration with its district office or by filing an appeal with the Board.

On April 25, 2017 appellant, through counsel, requested reconsideration.<sup>7</sup> Counsel noted that, contrary to OWCP's assertion in its April 27, 2016 decision, Dr. Keating had examined appellant in 2011 when he found appellant to be permanently totally disabled. He further asserted that the SOAF provided Dr. Doman was deficient because it did not include a list of treating

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<sup>6</sup> Appellant also submitted physical therapy treatment notes and brief clinic notes from Dr. Wiltz dated July to December 1992.

<sup>7</sup> On July 26, 2016 appellant authorized Paul H. Felsler, Esq., to represent him.

physicians and did not include appellant's job requirements, as required by OWCP procedures. Counsel argued that Dr. Doman's report was not well rationalized because he did not refer to the treating physicians and his opinion was conclusory. He also asserted that appellant's emotional condition was due to the March 1, 1990 employment injury and that his medications rendered him medically unable to work. Counsel concluded that appellant was not capable of any work at present and that, at the very least, further development of the medical evidence was needed.

The record also includes a June 27, 2016 report in which Dr. Keating indicated that appellant was there to discuss his disability situation. Dr. Keating opined, within a degree of medical certainty, that appellant was permanently disabled. He related that he had again reviewed the medical evidence forwarded previously and reiterated that appellant remained totally disabled.

By decision dated July 14, 2017, OWCP reviewed the merits of appellant's claim. It admitted that it had overlooked Dr. Keating's 2011 report in its April 27, 2016 decision, but noted that his current opinion reiterating his prior conclusion was based on an evaluation that was five years old and was insufficient to override the most recent medical determination that appellant's work injuries had resolved. OWCP noted that Dr. Keating did not base his current opinion on a recent physical or diagnostic evaluation. It also found that appellant had not established a consequential emotional condition.

### **LEGAL PRECEDENT -- ISSUE 1**

In discussing the range of compensable consequences, once the primary injury is causally connected with the employment, Larson notes that, when the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury, the rules that come into play are essentially based upon the concepts of direct and natural results and of claimant's own conduct as an independent intervening cause. The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.<sup>8</sup>

A claimant bears the burden of proof to establish a claim for a consequential injury. As part of this burden, he or she must present rationalized medical opinion evidence.<sup>9</sup> The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 the employee.<sup>10</sup> Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>11</sup>

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<sup>8</sup> Lex K. Larson, *The Law of Workers' Compensation* § 3.05 (2014); see Charles W. Downey, 54 ECAB 421 (2003).

<sup>9</sup> Charles W. Downey, *id.*

<sup>10</sup> Leslie C. Moore, 52 ECAB 132 (2000); Gary L. Fowler, 45 ECAB 365 (1994).

<sup>11</sup> Dennis M. Mascarenas, 49 ECAB 215 (1997).

## ANALYSIS -- ISSUE 1

The Board finds that appellant did not establish that depression or any other emotional condition was a consequence of the March 1, 1990 employment injury.

The medical evidence most contemporaneous with the March 1, 1990 employment injury when appellant fell from a ladder is the hospital discharge summary from Dr. Wiltz dated March 10, 1990. In that report, Dr. Wiltz recorded that appellant reported hitting his left shoulder and right hip and that he denied any head, abdominal, or chest trauma. Discharge diagnoses were fracture of glenoid of the left shoulder, fracture of the right acetabulum, and cervical and lumbosacral strains. Dr. Wiltz, who treated appellant for many years, did not diagnose an emotional condition.

Dr. Dudley noted in April 1992, two years after the employment injury, that appellant had a considerable depressive reaction to his employment injury and diagnosed adjustment disorder with depression, and rule-out organic brain syndrome, not otherwise specified. The Board has long held that contemporaneous evidence is entitled to greater probative value than later evidence.<sup>12</sup> Dr. Dudley's opinion contains no explanation as to how a fall that occurred two years prior caused continuing depression and is thus insufficient to establish an employment-related emotional condition. A medical report is of limited probative value on a given medical question if it is unsupported by medical rationale.<sup>13</sup>

Dr. Beal advised in 2014 that appellant had been referred to him in 1990 and had been followed since that time with weekly psychotherapy group sessions and individual therapy and medication. He diagnosed major depression which had persisted since 1990. There is no indication in the record regarding who referred appellant to Dr. Beal in 1990. The record contains no treatment notes from Dr. Beal or any other psychotherapy treatment notes at all. A physician's opinion on causal relationship between a claimant's disability and an employment injury is not dispositive simply because it is rendered by a physician. To be of probative value, the physician must provide rationale for the opinion reached. Where no such rationale is present, the medical opinion is of diminished probative value.<sup>14</sup> Dr. Beal merely indicated that appellant had been treated since 1990 and did not specifically refer to the March 1, 1990 employment injury as the etiology or provide an explanation regarding the cause of the diagnosed depression. His opinion is, therefore, insufficient to establish a consequential emotional condition.<sup>15</sup>

Likewise Dr. Chin's March 2016 opinion that appellant had suffered from depression for many years that stemmed from his inability to work due to his employment injury is of insufficient probative value. While she noted that he had been under Dr. Beal's care and requested that OWCP accept that appellant's depression was work related and keep his case open until his depression was in remission, there is no indication that Dr. Chin was treating appellant for either his

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<sup>12</sup> *S.S.*, 59 ECAB 315 (2008).

<sup>13</sup> *T.F.*, 58 ECAB 128 (2006).

<sup>14</sup> *Thaddeus J. Spevack*, 53 ECAB 474 (2002).

<sup>15</sup> *Charles W. Downey*, *supra* note 8.



orthopedic or claimed emotional conditions. A mere conclusion without the necessary rationale explaining how and why the physician believes that appellant's work activities could result in the diagnosed condition is insufficient to meet his burden of proof.<sup>16</sup>

Dr. Saddler merely noted treating appellant for depression. Likewise Dr. Teliho noted appellant's diagnosis of eurocognitive disorder with behavioral disturbance and major depressive disorder, however, he offered no opinion causally relating appellant's diagnoses to his employment injury. Lacking an opinion regarding causal relationship, his report is of no probative value.<sup>17</sup> Similarly, Dr. Slavin diagnosed dementia, anxiety, and depression, as well as a closed head injury, but he did not causally relate the diagnosed conditions to appellant's accepted employment injury. Without an opinion regarding causal relationship his report is of no probative value.<sup>18</sup>

While appellant submitted evidence indicating that he was receiving SSA disability benefits for mood disorders, the determination of an employee's rights or remedies under other statutory authority does not establish entitlement to benefits under FECA. Under FECA, to establish disability, an employee's injury must be shown to be causally related to an accepted injury or accepted factors of his or her federal employment. For this reason, the determinations of other administrative agencies or courts, while instructive, are not determinative with regard to disability arising under FECA.<sup>19</sup>

Lastly, the record indicates that appellant was on active duty with the army reserves in 1990, was receiving weekly treatment at the VA by a psychiatrist, and was attending a PTSD group there two times weekly in 2013. The record before the Board contains no VA records other than to indicate that appellant received a VA disability benefit of 70 percent in 2009.

For conditions not accepted by OWCP as being employment related, it is appellant's burden to provide rationalized medical evidence sufficient to establish causal relation, not OWCP's burden to disprove any such relationship.<sup>20</sup> The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.<sup>21</sup> Appellant submitted insufficient medical evidence to establish a consequential relationship between his diagnosed depression and/or any other diagnosed emotional condition, such as a traumatic brain injury, and the accepted March 1, 1990 employment injury.<sup>22</sup>

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<sup>16</sup> See *Beverly A. Spencer*, 55 ECAB 501 (2004).

<sup>17</sup> *J.G.*, Docket No. 15-1468 (issued October 7, 2015).

<sup>18</sup> *Id.*

<sup>19</sup> See *J.F.*, 59 ECAB 331 (2008).

<sup>20</sup> *G.A.*, Docket No. 09-2153 (issued June 10, 2010).

<sup>21</sup> *C.B.*, Docket No. 08-1583 (issued December 9, 2008).

<sup>22</sup> See *Debra L. Dillworth*, 57 ECAB 516 (2006).

## LEGAL PRECEDENT -- ISSUE 2

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.<sup>23</sup> OWCP's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>24</sup>

## ANALYSIS -- ISSUE 2

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective May 2, 2016.

The accepted conditions are fracture of glenoid of the left shoulder, fracture of the right acetabulum, cervical and lumbosacral strains, and herniated disc at L5-S1. OWCP properly found that the weight of the medical evidence rested with the opinion of Dr. Doman who performed a second opinion evaluation for OWCP on February 16, 2016.

At the time OWCP referred appellant to Dr. Doman in January 2016, the most recent medical evidence of record regarding the accepted condition was a report by Dr. Saddler dated March 7, 2014 in which she indicated that she had been treating appellant since 2012 for chronic back pain which was disabling.

In his comprehensive February 16, 2016 report, Dr. Doman noted his review of the SOAF and medical record. He described the March 1, 1990 employment injury, appellant's complaint of back pain, and his physical examination findings which included excellent shoulder and hip range of motion, no shoulder instability, and a negative straight leg raising test. Dr. Doman indicated that appellant had clear signs of intentional symptom magnification with complaints of significant back pain with simple attempts to flex both knees while in the prone position on a nonphysiologic basis, intentional cogwheeling, and give way weakness when left lower extremity strength was tested. He reviewed x-rays noting no evidence of glenoid fracture or degenerative changes in the right shoulder, and mild age-related disc space narrowing at L5-S1 on lumbar spine x-ray. Dr. Doman opined that there were no ongoing residuals of the accepted conditions which had long-since resolved and that any work-related disability had ceased by March 1, 1992. He concluded that he had no physical limitations due to the March 1, 1990 employment injury and could work an eight-hour day.

In response to OWCP's March 3, 2016 proposal to terminate appellant's wage-loss compensation and medical benefits, appellant submitted treatment notes dated March 11, 2015 to March 22, 2016 in which Dr. Saddler noted treating appellant for mental health problems, back pain, diabetes, hypertension, and hyperlipidemia. While she indicated that appellant continued to be depressed, as found above, appellant did not establish an employment-related emotional

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<sup>23</sup> *Jaja K. Asaramo*, 55 ECAB 200 (2004).

<sup>24</sup> *Id.*

condition. Dr. Saddler did not indicate that appellant was totally disabled due to the accepted conditions.

Dr. Keating noted seeing appellant on March 21, 2016 and described a chief complaint of left-sided lower back pain and reported that he had previously examined appellant in July 2011 when he was permanently disabled. He indicated that he would review appellant's previous records and, following receipt of his most recent evaluation, would comment in detail regarding appellant's condition. Generally, findings on examination are needed to justify a physician's opinion that an employee is disabled from work.<sup>25</sup> Dr. Keating provided no examination findings in his March 21, 2016 report.

As to counsel's assertion regarding the SOAF, the Board finds that the SOAF dated January 14, 2016, forwarded to Dr. Doman, comports with OWCP procedures. Section 2.809.5 of OWCP procedures<sup>26</sup> provides that the essential elements of a SOAF are date of injury, date of birth, the claimant's job when injured, his employing establishment, and a history of injury. A review of the January 14, 2016 SOAF includes these elements.

The Board finds Dr. Doman's opinion to be probative evidence and reliable and sufficient to justify OWCP's termination of wage-loss compensation and medical benefits for the accepted conditions of fracture of glenoid of the left shoulder, fracture of the right acetabulum, cervical and lumbosacral strains, and herniated disc at L5-S1. There is no contemporaneous medical evidence of equal weight supporting appellant's claim for continuing disability compensation and medical benefits.<sup>27</sup>

### **LEGAL PRECEDENT -- ISSUE 3**

As OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits on May 2, 2016, the burden shifted to him to establish that he had continuing disability causally related to the accepted conditions.<sup>28</sup> Causal relationship is a medical issue. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 the claimant.<sup>29</sup>

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<sup>25</sup> C.G., Docket No. 17-0189 (issued April 4, 2017).

<sup>26</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Statement of Accepted Facts*, Chapter 2.809.5 (September 2007).

<sup>27</sup> See *K.E.*, Docket No. 17-1216 (issued February 22, 2018).

<sup>28</sup> See *Daniel F. O'Donnell, Jr.*, 54 ECAB 456 (2003).

<sup>29</sup> *Supra* note 10.

### ANALYSIS -- ISSUE 3

The Board finds that appellant submitted insufficient medical evidence following the May 2, 2016 termination to establish that he continued to be disabled due to the accepted conditions.

The only medical evidence submitted after the termination is Dr. Keating's June 16, 2016 report. In that report he merely indicated that appellant was there to discuss his disability situation. Dr. Keating opined that appellant was permanently disabled, and related that he had again reviewed the medical evidence forwarded previously and reiterated that appellant remained totally disabled. He, however, yet again provided no examination findings or any medical rationale to support his conclusion.<sup>30</sup> Thus, contrary to counsel's assertion on appeal, Dr. Keating's opinion is insufficient to supersede Dr. Doman's report that included comprehensive examination findings.

As there is no medical evidence of record of sufficient rationale to establish that appellant continued to be disabled after May 2, 2016 due to the accepted March 1, 1990 employment injury, he did not meet his burden of proof to establish that he continued to be entitled to wage-loss compensation and medical benefits after that date.

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 appellant did not establish a consequential emotional condition caused by a March 1, 1990 employment injury, that OWCP properly terminated his wage-loss compensation and medical benefits on May 2, 2016, and that appellant did not establish that he continued to be disabled after May 2, 2016 causally related to the March 1, 1990 employment injury.

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<sup>30</sup> *C.G.*, *supra* note 25.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 14, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 27, 2018  
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