



## **FACTUAL HISTORY**

On September 14, 1983 appellant, then a 38-year-old part-time laborer, filed a traumatic injury claim (Form CA-1) alleging that on August 17, 1983 he sustained an injury as a result of being jerked forward when he swung a sledge hammer and missed a pole while in the performance of duty. He stopped work on August 22, 1983. On October 1, 1983 appellant's temporary appointment expired. OWCP accepted his claim for lumbosacral strain, aggravation of degenerative disc disease, and lumbar disc herniation L5-S1. It paid compensation benefits and placed appellant on the periodic rolls.

Appellant continued to receive medical treatment for his back condition as well as for concurrent nonwork-related conditions. He underwent back surgery in 1992. The record also reveals that appellant had preexisting back injuries due to his military service in the Army. He asserted that he recovered from his prior back injuries before the start of his federal employment in 1982.

On June 4, 1999 OWCP proposed to terminate appellant's wage-loss compensation benefits based on a May 24, 1999 report of Dr. Charles Perkins, a Board-certified neurologist and second opinion examiner. It finalized the proposed termination of benefits in a decision dated July 8, 1999. On July 26, 1999 OWCP received appellant's request for a hearing before an OWCP hearing representative. Following a preliminary review, by decision dated September 14, 1999, OWCP's hearing representative reversed the July 8, 1999 decision terminating appellant's wage-loss compensation benefits finding that OWCP did not meet its burden of proof. OWCP reinstated appellant's wage-loss compensation and medical benefits.

Appellant continued to receive medical treatment for his accepted conditions and underwent several OWCP-directed examinations to determine whether he continued to suffer residuals and remained disabled due to his August 17, 1983 employment injury.

On July 31, 2007 OWCP again proposed to terminate appellant's wage-loss compensation and medical benefits based on the June 11, 2007 report of Dr. Robert Aigner, a Board-certified neurologist and impartial medical examiner (IME),<sup>2</sup> who opined that appellant no longer had any residuals or disability due to his August 17, 1983 employment injury.

In a letter dated September 20, 2007, OWCP determined that the July 31, 2007 notice of proposed termination was premature because further development of Dr. Rutberg's medical opinion was needed. It requested an addendum report from Dr. Rutberg regarding appellant's employment-related conditions and any continuing disability. The evidence of record does not contain any additional reports from Dr. Rutberg.

---

<sup>2</sup> OWCP determined that a conflict in medical evidence existed between Dr. Haley Minnehan, a Board-certified family practitioner and appellant's treating physician, who indicated that she treated him for chronic low back and neck pain due to the August 17, 1983 employment injury, and Dr. David L. Rutberg, a Board-certified neurospine surgeon and second opinion examiner, who opined that appellant no longer suffered residuals of his work-related injury and was able to return to work.

Appellant continued to receive medical treatment for his back, neck, and lower extremity symptoms. The evidence of record contains very limited medical records from 2007 to 2013 with no medical reports from appellant's physicians from 2009 to 2010.

On June 17, 2011 OWCP referred appellant to Dr. Roy T. Frizzell, a Board-certified neurosurgeon, for a second opinion examination to determine whether he continued to suffer residuals of his August 17, 1983 employment injury and whether he remained disabled from work. In a July 11, 2011 report, Dr. Frizzell described appellant's employment injury and reviewed his history. He provided examination findings and diagnosed resolved lumbar strain, aggravation of degenerative disc disease, and lumbar herniation L5-S1, resolved by surgery of 1992. Dr. Frizzell opined that appellant's condition of aggravation of disc disease was active and continued to be related to the August 17, 1983 employment injury, but he no longer had ongoing residuals of lumbosacral strain and disc herniation of L5-S1.

Appellant received medical treatment from Dr. T. William Hill, a Board-certified neurosurgeon. In reports dated July 28 and September 19, 2011, Dr. Hill related that appellant had a history of back and increasing leg pain. He reviewed appellant's history and provided findings on physical examination. Dr. Hill noted that a lumbar magnetic resonance imaging (MRI) scan examination showed degenerative changes and a left paracentral disc protrusion with possible impingement on the L5 root. He opined that appellant had back and leg symptoms, more on the left than right, with foraminal stenosis and an eccentric disc protrusion with bony spur on the left at L4-5. Dr. Hill recommended a series of lumbar epidural steroid injections and advised that if appellant's symptoms continued he would consider lumbar decompression, instrumentation, and fusion surgery.

The record does not contain any medical reports from 2012.

On April 1, 2013 OWCP reviewed appellant's record and noted that the last medical report from his treating physician was from 2011. It requested that he arrange for the submission of an updated medical report that addressed the questions presented regarding his current medical condition.

In an April 28, 2013 narrative letter, Dr. Minnehan reported that appellant had an acute L4-5 disc herniation, causing disability. She mentioned that he had been examined by a neurosurgeon who recommended surgery to alleviate his pain. In an April 28, 2013 work capacity evaluation form (OWCP 5c), Dr. Minnehan indicated that appellant was not capable of performing his usual job or to work full time with restrictions. She explained that he was unable to work due to constant pain. In chart notes dated April 10 and 29, 2013, Dr. Minnehan related his continued complaints of persistent neck and back pain. She noted that his back pain was long and extensive and related to an August 17, 1983 work injury. Dr. Minnehan reviewed appellant's history and provided physical examination findings. She opined that he had chronic low back pain related to an L4-5 disc protrusion on the left.

No other medical reports were submitted to the record until 2015.

On May 18, 2015 OWCP referred appellant to Dr. Spencer Greendyke, a Board-certified orthopedic surgeon, for a second opinion examination to determine whether appellant continued

to suffer residuals of his August 17, 1983 employment injury and whether he required further medical treatment.

In a June 22, 2015 report, Dr. Greendyke described the August 17, 1983 employment injury regarding low back and cervical strain, temporary exacerbation of preexisting lumbar degenerative disc disease, and herniated L5-S1 disc. He also noted appellant's preexisting service-connected back injury while serving in the U.S. Army. Dr. Greendyke discussed the medical treatment appellant received and indicated that a thorough records review was documented in the IME report from Dr. Frizzell dated July 11, 2011. He related appellant's current complaints of constant low back pain and bilateral upper and lower extremity weakness. Upon examination of appellant's cervical and lumbar spine, Dr. Greendyke observed no clinical deformity, scoliosis, muscle atrophy, or visible masses. He indicated that palpation of the lumbar spine revealed no evidence of muscle spasm, point tenderness, crepitus, or palpable masses. Neuromuscular examination revealed grossly intact sensation to light touch and no clonus in the lower extremities. Dr. Greendyke reported that deep tendon reflexes were +1/4 and bilaterally symmetric in the upper and lower extremities. Straight leg raise testing was positive in both the seated and supine positions.

Dr. Greendyke noted persistent subjective complaints of cervical and lumbar pain with left upper and lower extremity numbness, and substantiated by objective diagnostic testing, unrelated to the August 17, 1983 employment injury, on a more likely than not basis. He opined that appellant's accepted conditions had completely resolved. Dr. Greendyke noted that the condition of lumbosacral strain had resolved completely, the condition of aggravation of degenerative disc disease had resolved within months of the August 17, 1983 employment injury, and the condition of herniated disc at L5-S1 had resolved after the 1992 lumbar surgery. He reported that recent MRI scan studies showed that appellant appeared to have developed lumbar spondylosis with arthritis, which was normal for his age. Dr. Greendyke explained that appellant developed lumbar spine arthritis and spondylosis over the years, which was related to the normal progression of degenerative disc disease. He believed that this condition was the source of appellant's ongoing complaints of low back pain. Dr. Greendyke concluded that, as a result of the August 17, 1983 work injury, appellant sustained a temporary exacerbation of his preexisting lumbar spine disc degeneration and previous lumbosacral strain injuries. He advised that appellant did not have any work limitations attributable to his employment injury.

On July 13, 2015 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits based on Dr. Greendyke's June 22, 2015 report. It determined that the weight of the medical evidence rested with Dr. Greendyke, who opined that appellant no longer suffered residuals of his August 17, 1983 employment injury and was no longer disabled from work. Appellant was afforded 30 days to submit evidence or argument if he disagreed with the decision.

In a July 29, 2015 report, Dr. Hill related that appellant was evaluated on July 27, 2015 and that he was last seen in 2011 for back and bilateral leg pain. In 2011, appellant was found to have a herniated disc with lateral recess and foraminal stenosis at L4-5 based upon MRI scan evaluation. Dr. Hill noted appellant's physical examination findings and related that, due to appellant's current pain complaints, he may have a worsening herniation or possible extrusion. He therefore recommended that appellant undergo another lumbar MRI scan.

By letter dated August 3, 2015, appellant requested that OWCP call Dr. Hill and authorize an MRI scan. He related that Dr. Hill believed that appellant's lumbar condition was worsening.

OWCP finalized the proposed termination of appellant's wage-loss compensation and medical benefits in a decision dated August 18, 2015. It found that Dr. Greendyke's June 22, 2015 second opinion report represented the weight of the medical evidence and established that appellant no longer suffered residuals of or disability due to his August 17, 1983 employment injury.

On August 24, 2015 OWCP received appellant's request for a hearing before an OWCP hearing representative. Appellant asserted in a letter dated September 25, 2016 that his back still bothered him. He pointed out that he had done everything OWCP had asked him and questioned how OWCP could terminate his wage-loss compensation benefits based on the opinion of a physician who did not even examine him and only questioned him for six minutes. Appellant related that his physician informed him that he needed back surgery and alleged that MRI scan testing confirmed his treating physician's recommendation.

On September 8, 2015 OWCP received an August 14, 2015 MRI scan report, wherein Dr. Mark A. Terry, a Board-certified diagnostic radiologist, noted that appellant complained of back and left leg pain. Dr. Terry related that there were no changes since the 2011 examination, "which probably" constituted herniated nucleus pulposus L4-5 on the left side and annular tear at the same level.

Appellant's wife provided a statement dated October 16, 2015. She described the various problems appellant had experienced regarding his claim. Appellant's wife pointed out that appellant's treating physicians believed that he needed surgery, but OWCP's physicians disagreed. She asserted that appellant continued to experience severe back pain and needed surgery to resolve his condition.

On October 28, 2015 appellant underwent lumbar surgery.

In a March 11, 2016 progress note, Dr. Hill indicated that a follow-up MRI scan revealed good compression at L3-4, L4-5 with some scar tissues surrounding the nerve roots, but no significant compression or displacement of the nerve roots. He related that there was still a small bulge in the foramen at L3-4 on the left, but the nerve root did not appear to be as displaced as his previous scans. Dr. Hill recommended that appellant undergo a series of lumbar epidural steroid injections.

On April 12, 2016 a telephone hearing was held before an OWCP hearing representative. Appellant alleged that he disagreed with OWCP's decision to terminate his wage-loss compensation and medical benefits based on Dr. Greendyke's report. He pointed out that Dr. Greendyke never examined him or looked at his back, but only interviewed him for six minutes. Appellant asserted that all the physicians that OWCP referred him to did not examine his back, but simply attributed his neck and back symptoms to his military service. He explained that the only back injuries he sustained in the military were pulled muscles and pointed out that

when he left the military he underwent a physical examination, which confirmed that he was in good shape.

By decision dated June 6, 2016, OWCP's hearing representative affirmed the August 18, 2015 termination decision. He found that the weight of medical evidence rested with the June 11, 2015 second opinion report of Dr. Greendyke, who opined that appellant's August 17, 1983 employment injury had resolved and that he was no longer disabled from work as a result of his accepted injury.

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

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

### **ANALYSIS -- ISSUE 1**

OWCP accepted that appellant sustained lumbar strain, lumbar disc herniation at L5-S1, and aggravation of degenerative disc disease as a result of an August 17, 1983 employment injury. Appellant stopped work on August 22, 1983 and received compensation benefits on the periodic rolls. In a June 22, 2015 second opinion report, Dr. Greendyke opined that appellant no longer suffered residuals or disability due to his August 17, 1983 employment injury. OWCP determined that Dr. Greendyke's opinion constituted the weight of the evidence and thereafter terminated appellant's entitlement to wage-loss compensation and medical benefits effective August 18, 2015.

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits as of August 18, 2015 because the medical evidence fails to establish that he had residuals or disability causally related to the August 17, 1983 employment injury.

---

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

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

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

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

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

As appellant had not submitted any medical evidence to the record since April 2013 to substantiate his ongoing residuals and disability, OWCP referred appellant to Dr. Greendyke on May 18, 2015.<sup>8</sup>

The Board finds that OWCP properly accorded the weight of medical evidence to Dr. Greendyke's second opinion report. Dr. Greendyke provided an accurate description of the August 17, 1983 employment injury and physical examination findings. He noted persistent subjective complaints of cervical and lumbar pain with left upper and lower extremity numbness unrelated to the August 17, 1983 employment injury. Dr. Greendyke related that appellant had developed lumbar spine arthritis and spondylosis due to the normal progression of degenerative disc disease. He opined that this condition was the source of appellant's ongoing low back pain. Dr. Greendyke reported that appellant's accepted conditions had completely resolved. He noted that the condition of lumbosacral strain had resolved completely, the condition of aggravation of degenerative disc disease had resolved within months of the August 17, 1983 employment injury, and the condition of herniated disc at L5-S1 had resolved after the 1992 lumbar surgery. Dr. Greendyke advised that appellant did not have any work limitations attributable to his employment injury.

The Board finds that he had full knowledge of the relevant facts and properly evaluated the course of appellant's condition. Dr. Greendyke's opinion is based on a proper factual and medical history and his report supported a detailed knowledge of this history. He reviewed appellant's extensive medical records and made his own examination findings to reach a reasoned conclusion regarding appellant's conditions.<sup>9</sup> At the time benefits were terminated, Dr. Greendyke found no basis for the existence of residuals of the accepted conditions or to attribute any continued disability to appellant's accepted conditions. His opinion as set forth in his June 22, 2015 report is found to be probative evidence and reliable. The Board finds that Dr. Greendyke's opinion constitutes the weight of the medical evidence and is sufficient to justify OWCP's termination of benefits for the accepted conditions.<sup>10</sup>

Prior to the termination of appellant's compensation benefits, OWCP received the July 29, 2015 report from Dr. Hill. Dr. Hill summarized findings from appellant's 2011 evaluation, appellant's current complaints and he then recommended a new MRI scan evaluation. Dr. Hill's report was of limited probative value and was not in equipoise with that of Dr. Greendyke as he offered no probative medical opinion, based upon objective current findings, as to whether appellant had residuals or disability causally related to his August 17,

---

<sup>8</sup> See *Felipe Cordova*, Docket No. 04-0297 (issued April 19, 2004) (for a discussion that medical evidence which is two years old had grown stale and its relevance greatly diminished).

<sup>9</sup> See *Michael S. Mina*, 57 ECAB 379 (2006) (the opportunity for and thoroughness of examination, the accuracy and 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 are facts, which determine the weight to be given to each individual report).

<sup>10</sup> See *S.G.*, Docket No. 16-0390 (issued September 20, 2017).

1983 employment injury. The Board finds therefore that Dr. Hills's report was of limited probative value because it was equivocal and speculative in nature.<sup>11</sup>

The Board finds therefore that OWCP properly terminated appellant's compensation effective August 18, 2015 based on Dr. Greendyke's opinion.

### **LEGAL PRECEDENT -- ISSUE 2**

As OWCP properly terminated appellant's compensation benefits, the burden shifts to the employee to establish continuing disability after that date causally related to his or her accepted injury.<sup>12</sup> To establish causal relationship between the accepted conditions as well as any attendant disability claimed and the employment injury, the employee must submit rationalized medical evidence based on a complete medical and factual background supporting such causal relationship.<sup>13</sup> Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.<sup>14</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that appellant failed to establish that he had any continuing disability or residuals of his accepted lumbosacral strain, aggravation of degenerative disc disease, or L5-S1 disc herniation, on or after August 18, 2015.

The issue of whether appellant remains entitled to compensation for continuing disability and whether he continued to experience residuals from his accepted condition is a medical one, based on the medical evidence of record.<sup>15</sup>

Following the termination of his compensation benefits, appellant submitted an August 14, 2015 MRI scan report from Dr. Terry, as well as an additional report from Dr. Hill, and an October 16, 2015 statement from his wife.

Dr. Terry's August 14, 2015 MRI scan report noted findings of eccentric bulge "which probably" constituted a herniated nucleus pulposus at L4-5 and annular tear at the same level. Terms such as "could be" or "most probably" are speculative in nature and the Board has held that such opinions are therefore of limited probative value.<sup>16</sup> The other diagnosis of annular tear was not an accepted condition. The Board has found that diagnostic studies are of limited

---

<sup>11</sup> See *G.P.*, Docket No. 17-0039 (issued July 14, 2017).

<sup>12</sup> *Manuel Gill*, 52 ECAB 282 (2001). See *G.C.*, Docket No. 17-0062 (issued December 11, 2017).

<sup>13</sup> *R.D.*, Docket No. 16-0982 (issued December 20, 2016); *R.F.*, Docket No. 16-0845 (issued July 25, 2017).

<sup>14</sup> *Paul Foster*, 56 ECAB 208 (2004); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>15</sup> *Gary R. Sieber*, 46 ECAB 215 (1994); see also *G.C.*, *supra* note 12.

<sup>16</sup> *S.E.*, Docket No. 08-2214 (issued May 6, 2009) (the Board has held that opinions such as the condition is probably related, most likely related, or could be related are speculative and diminish the probative value of the medical opinion).

probative value as they do not address the issue of continuing disability or whether the employee still had residuals causally related to the accepted employment injury.<sup>17</sup>

OWCP also received another report from Dr. Hill. Dr. Hill related in his March 11, 2016 report that a follow up MRI scan showed good compression at L3-4, and L4-5, with some scar tissue surrounding the nerve roots, but no significant compression or displacement of the nerve roots. He also noted a small bulge at L3-4, but again the nerve root did not appear displaced. As previously noted, following termination of compensation it is appellant's burden of proof to establish that he was disabled or currently required medical treatment due to an employment-related condition.<sup>18</sup> Dr. Hill's report does not address residuals or disability after August 18, 2015 due to the accepted conditions of lumbosacral strain, aggravation of degenerative disc disease, or lumbar disc herniation at L5-S1. As such his report is of limited probative value.<sup>19</sup>

Appellant also submitted a statement from his wife in support of his claim for continuing disability. A lay opinion however is of no probative value as lay individuals are not competent to render a medical opinion.<sup>20</sup>

For the reasons discussed above, appellant has not met his burden of proof to establish continuing residuals or disability on or after August 18, 2015.

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 OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective August 18, 2015. The Board further finds that appellant has not established continuing residuals or disability on or after August 18, 2015 causally related to his August 17, 1983 employment injury.

---

<sup>17</sup> See *T.M.*, Docket No. 16-1033 (issued June 22, 2017).

<sup>18</sup> *Supra* note 15.

<sup>19</sup> See *P.M.*, Docket No. 16-1321 (issued January 10, 2017).

<sup>20</sup> See *R.B.*, Docket No. 15-1143 (issued January 27, 2016).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 6, 2016 decision of the Office of Workers' Compensation Programs is affirmed.<sup>21</sup>

Issued: February 23, 2018  
Washington, DC

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

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

---

<sup>21</sup> Colleen Duffy Kiko, Judge, participated in this decision, but was no longer a member of the Board effective December 11, 2017.