United States Department of Labor
Employees' Compensation Appeals Board

M.B., Appellant	)	
and	)	**Docket No. 17-1606**
	)	**Issued: February 14, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Tallahassee, FL, Employer	)	

Appearances:
Appellant, pro se
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 July 18, 2017 appellant filed a timely appeal from a March 27, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 properly terminated appellant's wage-loss compensation and medical benefits effective June 8, 2016 as he no longer had any residuals or disability causally related to his accepted employment-related injuries.

FACTUAL HISTORY

On December 12, 2015 appellant, then a 54-year-old bulk mail technician, filed a traumatic injury claim (Form CA-1) alleging that he sprained his left lower back earlier that day

[1] 5 U.S.C. § 8101 *et seq.*

while removing a flat tub from a U-cart. He did not stop work at the time. In January 2016, OWCP accepted his claim for lumbar sprain.

Appellant underwent physical therapy and submitted physical therapy reports dated March 15 through April 8, 2016.

In a report dated April 8, 2016, Dr. Matthew C. Lee, an orthopedic surgeon, found that appellant's lumbar sprain had resolved. He also advised that lifting the mail tub on December 12, 2015 irritated appellant's preexisting spine instability (L4-5 spondylolisthesis). Dr. Lee indicated that greater than 50 percent of appellant's problem was related to his preexisting condition. He also noted that he never took appellant off of work, but had imposed a 25-pound lifting restriction. Dr. Lee indicated that appellant should be working.

In an April 18, 2016 report, Dr. Christopher D. Lowery, a chiropractor, diagnosed L3-4 disc bulge with bilateral foraminal narrowing, L4-5 spondylolisthesis with bulge, and L5-S1 bulge. Dr. Lowery noted that appellant's medical history included previous injuries from a motor vehicle accident.

On April 20, 2016 Dr. Lowery found that appellant's bilateral low back pain had not changed. Appellant tolerated adjustment well with no post-treatment complications and reported that there had been no change in his medical history following the last visit to the office. Dr. Lowery found that palpation during treatment revealed areas of altered tissue resistance, muscle spasms, and areas of increased sensitivity. He listed appellant's prognosis as good.

On April 20, 2016 OWCP expanded appellant's claim to include aggravation of lumbar spondylolisthesis (L4-5) as an accepted condition.

In an April 25, 2016 work capacity evaluation, (OWCP-5c) Dr. Lee advised that appellant was capable of performing his usual job full time without restrictions. He determined that appellant had reached maximum medical improvement (MMI) as of April 24, 2016. OWCP also received an unsigned note that indicated the temporary aggravation of appellant's spondylolisthesis had resolved and he had reached MMI as of April 24, 2016.

On April 27, 2016 appellant resumed his full-time, regular duties.

By letter dated May 5, 2016, OWCP issued a notice of proposed termination of medical benefits and future wage-loss compensation. It proposed to terminate appellant's FECA benefits based on Dr. Lee's April 8 and 25, 2016 reports. OWCP explained that, according to appellant's treating physician, both his lumbar sprain and temporary aggravation of L4-5 spondylolisthesis had resolved. It afforded appellant 30 days for the submission of additional evidence or argument, in writing, if he disagreed with the proposal.

Appellant submitted progress reports dated April 22 and 27, May 2, 4, 9, 13, and 17, 2016 from Dr. Lowery who reiterated that his prognosis was good.

OWCP also received an April 25, 2016 narrative report from Dr. Lee who indicated that appellant was seen for lumbar pain with left hip pain and described the pain as mild, worsening as the day progressed. Dr. Lee also indicated that the onset of appellant's symptoms occurred

after a December 12, 2015 employment injury at work while lifting a tub from a cart. He diagnosed lumbago, lumbosacral spondylosis without myelopathy, low back pain, and other spondylosis with radiculopathy, lumbosacral region. Dr. Lee opined that appellant's "severe pain in his exacerbation ha[d] resolved."

In a May 20, 2016 narrative statement, appellant indicated that he disagreed with the proposal to terminate his FECA benefits and contended that his medical condition required continued chiropractic care and physical therapy.

By decision dated June 9, 2016, OWCP terminated appellant's medical benefits and entitlement to future wage-loss compensation effective June 8, 2016 based on Dr. Lee's opinion.

In progress reports dated May 25, June 1, 8, and 15, 2016, Dr. Lowery reiterated that appellant's prognosis remained good.

In reports dated May 9, 13, and 25, 2016, Dr. Lowery provided restrictions of no heavy lifting.

In an undated report, Dr. Lowery noted that lumbar x-rays were taken following appellant's February 17, 2016 office visit and findings indicated L4-5 spondylolisthesis due to bilateral L4 pars defect, multilevel degenerative changes including disc space narrowing, and sclerotic changes. He noted that this mirrored the findings of the January 22, 2016 magnetic resonance imaging (MRI) study with an additional finding of an L2-3 left facet synovial cyst with moderate narrowing of the left lateral recess, L3-4 disc bulge with bilateral foraminal narrowing, L4-5 disc bulge with ligamentum hypertrophy, and L5-S1 disc bulge with moderate left and right foraminal narrowing. Dr. Lowery opined that these findings seemed to correlate with the trauma appellant sustained at work on December 12, 2015 and qualified him as a chiropractic patient as chiropractic manipulations were indicated.

Appellant submitted a February 17, 2016 report from Ian MacDonald, a nurse practitioner under Dr. Lee's supervision, who reiterated that appellant's symptoms from his work injury were an exacerbation of a previously existing condition. Mr. MacDonald also reiterated that appellant would like to continue with physical therapy and was referred for chiropractic care.

On November 2, 2016 Kimberly R. Hagen, a nurse practitioner under Dr. Lee's supervision, reiterated that appellant had a preexisting lumbar condition and recommended physical therapy.

Appellant also submitted a physical therapy report dated December 5, 2016.

On December 21, 2016 appellant requested reconsideration and argued that he continued to suffer residuals of his employment-related conditions.

In a November 2, 2016 duty status report (Form CA-17), Dr. Lee reiterated his opinion that appellant was capable of working full time without restrictions.

By decision dated March 27, 2017, OWCP denied modification of its prior decision because the medical evidence established that appellant's accepted conditions had resolved and he had no disabling residuals of his accepted employment injuries.

LEGAL PRECEDENT

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 was no longer related to the employment.[2] 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.[3] The right to medical benefits for an accepted condition, on the other hand, is not limited to the period of entitlement to disability compensation.[4] To terminate authorization for medical treatment, OWCP must establish that an employee no longer has residuals of an employment-related condition which would require further medical treatment.[5]

ANALYSIS

OWCP accepted appellant's traumatic injury claim for lumbar sprain and aggravation of L4-5 spondylolisthesis. It based its termination of FECA benefits on reports from Dr. Lee, appellant's attending physician.

In his April 8, 2016 report, Dr. Lee found that appellant's lumbar sprain had resolved. He further opined that lifting the mail tub on December 12, 2015 had irritated appellant's preexisting spine instability. Dr. Lee attributed greater than 50 percent of appellant's condition to his preexisting condition of lumbar L4-5 spondylolisthesis. On April 25, 2016 he noted that appellant was seen for lumbar pain with left hip pain and described the pain as mild, worsening as the day progressed. Dr. Lee indicated that the onset of appellant's symptoms occurred after a December 12, 2015 injury at work while lifting a tub from a cart. He diagnosed lumbago, lumbosacral spondylosis without myelopathy, low back pain, and other spondylosis with radiculopathy, lumbosacral region. Dr. Lee opined that appellant's "severe pain in his exacerbation ha[d] resolved." In an April 25, 2016 work capacity evaluation, he opined that appellant was capable of performing his usual job full time without restrictions. Dr. Lee determined that appellant had reached MMI as of April 24, 2016. Thus, the Board finds that OWCP properly relied on Dr. Lee's opinion to terminate appellant's FECA benefits effective June 8, 2016. In a November 2, 2016 duty status report (Form CA-17), Dr. Lee continued to advise that appellant was capable of working full time without restrictions.

[2] *See Elaine Sneed*, 56 ECAB 373 (2005); *Gloria J. Godfrey*, 52 ECAB 486 (2001). *See also C.B.*, Docket No. 10-1623 (issued April 11, 2011).

[3] *See Gewin C. Hawkins*, 52 ECAB 242 (2001).

[4] *See T.P.*, 58 ECAB 524 (2007); *Pamela K. Guesford*, 53 ECAB 727 (2002).

[5] *See Furman G. Peake*, 41 ECAB 361, 364 (1990); *see also L.G.*, Docket No. 09-1692 (issued August 11, 2010).

The Board finds that the evidence of record demonstrates that appellant no longer suffers from residuals of his accepted December 12, 2015 employment injury. The weight of the medical evidence as represented by Dr. Lee's opinion establishes that appellant's employment-related lumbar conditions have resolved.

The reports from appellant's chiropractor, Dr. Lowery, are of no probative medical value because he did not diagnose a spinal subluxation as demonstrated by x-ray.[6] Appellant further submitted evidence from nurse practitioners and physical therapists. However, these documents do not constitute competent medical evidence because neither a nurse practitioner nor a physical therapist is a "physician" as defined under FECA.[7] Certain health care providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.[8] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[9] A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician.[10] A medical report should bear the physician's signature or signature stamp.[11] OWCP may require an original signature on the report.[12] The Board finds that neither one of the nurse practitioner's reports was cosigned by Dr. Lee, nor did they bear the signature stamp of another qualified physician. Consequently, the above-noted evidence is insufficient to establish that appellant continues to suffer residuals of his accepted lumbar conditions.[13]

As such, OWCP properly terminated entitlement to medical and future wage-loss compensation benefits effective June 8, 2016.

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.

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[6] Section 8101(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. The term physician includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulations by the secretary. *See Merton J. Sills*, 39 ECAB 572, 575 (1988).

[7] 5 U.S.C. § 8101(2); *Sean O'Connell*, 56 ECAB 195 (2004) (nurse practitioners); *Jennifer L. Sharp*, 48 ECAB 209 (1996) (physical therapists). *See also Gloria J. McPherson*, 51 ECAB 441 (2000); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (a medical issue such as causal relationship can only be resolved through the submission of probative medical evidence from a physician).

[8] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

[9] *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006).

[10] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

[11] 20 C.F.R. § 10.331(a).

[12] *Id.*

[13] *See supra* notes 2-5.

CONCLUSION

The Board finds that OWCP properly terminated appellant's wage-loss compensation and medical benefits effective June 8, 2016 as he no longer had any residuals or disability causally related to his accepted employment-related injuries.

ORDER

IT IS HEREBY ORDERED THAT the March 27, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 14, 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