

FACTUAL HISTORY

On December 13, 1989 appellant, then a 34-year-old rubber worker, filed a traumatic injury claim (Form CA-1) alleging that on December 5, 1989 he sustained lower left back pain, left hip pain, pain down his left foot, and severe pain in the back of his hip and down his left leg to the foot. He indicated that he was picking up the end of a T-130 roll that had been placed in the hooper of the T-130 disassembly line while in the performance of duty. Appellant stopped work on December 5, 1989 and returned on December 6, 1989. He stopped work on December 11, 1989.

On September 19, 1990 OWCP accepted the claim for a lumbar sprain. On April 11, 1994 appellant was returned to limited-duty work in the machine shop division working four hours per day, four days per week with a 10- to 20-pound lifting restriction. On June 27, 1994 the hours were increased to six hours per day, four days per week. Appellant was placed on the periodic rolls and received wage-loss compensation for his injury-related disability.

On September 13, 1995 OWCP found that appellant was no longer totally disabled and reduced appellant's compensation based upon his ability to perform limited duties for four hours per day working in the machine shop division. It found that this position fairly and reasonably represented his wage-earning capacity.

After the claim lay dormant for several years, on August 24, 2016 OWCP referred appellant for a second opinion, along with an updated statement of accepted facts which included appellant's job description, a set of questions, and the medical record to Dr. William Blankenship, an orthopedic surgeon for a current determination of his disability status.

In a report dated September 27, 2016, Dr. Blankenship described appellant's history of injury and treatment and documented his examination of appellant. He noted that appellant had no paraspinal muscle spasm, list, or scoliosis. Dr. Blankenship indicated that, when asked, appellant actively flexed to 75 degrees as measured by goniometer. He advised that appellant had acute hyperextension as measured by goniometer and 10 degrees past neutral. Dr. Blankenship advised that knee and ankle jerks were depressed, but equal bilaterally, and straight leg raising was negative bilaterally. He indicated that there was no weakness over the anterior tibialis, extensor *hallucis* longus, short toe flexors, or peroneals on either side. Dr. Blankenship advised that the right thigh measured 47 centimeters to the left and 45 centimeters on the right. He found that both calves measured 35 centimeters. Dr. Blankenship advised that there were no objective findings, no atrophy, and straight leg raising was negative. He explained that there was no muscle spasm or actual limitation of motion in flexion and extension. Dr. Blankenship indicated that the subjective complaints did not correlate with his objective findings.

Dr. Blankenship opined that there was no objective evidence that the findings from the December 5, 1989 employment injury were still active and causing any residual symptoms. He opined that there was no objective basis for appellant not being able to return to full duties, if available. Regarding the physical requirements of the permanent job in the machine shop division described in the job description, Dr. Blankenship explained that there was no objective

basis why appellant could not carry out the physical requirements of his job if they were available.

On February 7, 2017 OWCP issued a notice of proposed termination of his wage-loss compensation and medical benefits. It proposed to terminate appellant's compensation finding that the weight of the medical evidence, as represented by the report of Dr. Blankenship, established that the residuals of the work injury had ceased. OWCP noted that the case would be held open for 30 days to afford appellant an opportunity to submit additional evidence or argument to contest the termination of his benefits.

In response to the proposed notice of termination of benefits, OWCP received a copy of the November 20, 2008 second opinion report from Dr. Robert Holladay, a Board-certified orthopedic surgeon.³

By decision dated March 10, 2017, OWCP terminated appellant's wage-loss compensation and medical benefits, effective that date. It found that the weight of medical evidence rested with Dr. Blankenship and supported that appellant no longer had residuals of the accepted work-related conditions. OWCP also explained that, since it was determined that he no longer had residuals of his accepted work-related conditions and was no longer disabled from work as a result of the accepted injury, formal modification of his loss of wage-earning capacity (LWEC) decision was not necessary. It explained that the medical evidence of record was sufficient to meet OWCP's burden of proof to terminate benefits and was also sufficient to negate an LWEC decision on the basis of a material change in the medical condition.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it bears the burden of proof to justify modification or termination of benefits.⁴ Having determined that an employee has a disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.⁵ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.⁶ To terminate authorization for medical treatment, OWCP must establish that the employee no longer has residuals of an employment-related condition that require further medical treatment.⁷

³ On November 20, 2008 OWCP made a referral for a second opinion examination with Dr. Holladay. Dr. Holladay diagnosed strain and sprain of the lumbar spine, but found no objective findings and determined that the original work injury had resolved and that appellant was capable of returning to his full-time, unrestricted work-duty position at the time of his injury.

⁴ *Curtis Hall*, 45 ECAB 316 (1994).

⁵ *Jason C. Armstrong*, 40 ECAB 907 (1989).

⁶ *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

⁷ *Calvin S. Mays*, 39 ECAB 993 (1988).

ANALYSIS

The Board finds that OWCP has met its burden of proof in terminating appellant's wage-loss compensation and medical benefits effective March 10, 2017 based upon the medical report of Dr. Blankenship.

On August 24, 2016 OWCP referred appellant for a second opinion examination with Dr. Blankenship.⁸ The Board notes that the medical evidence of record prior to the report of Dr. Blankenship is devoid of any ongoing treatment records since 2010 for appellant's accepted back sprain.

In a report dated September 27, 2016, Dr. Blankenship described appellant's history of injury and treatment and examined appellant. He noted that appellant had no paraspinal muscle spasm, list, or scoliosis and explained that when asked, appellant actively flexed to 75 degrees as measured by goniometer. Dr. Blankenship determined that appellant had acute hyperextension as measured by goniometer and 10 degrees past neutral. He advised that knee and ankle jerks were depressed, but equal bilaterally, and straight leg raising was negative bilaterally. Dr. Blankenship also indicated that there was no weakness over the anterior tibialis, extensor *hallucis* longus, short toe flexors, or peroneals on either side. He determined that the right thigh measured 47 centimeters to the left and 45 centimeters on the right. Dr. Blankenship found that both calves measured 35 centimeters. He also explained that there were no objective findings, no atrophy, and straight leg raising was negative. Dr. Blankenship indicated that there was no muscle spasm or actual limitation of motion in flexion and extension. Additionally, he explained that the subjective complaints did not correlate with the objective findings.

Dr. Blankenship opined that there was no objective evidence that the findings from the December 5, 1989 employment injury were still active and causing any residual symptoms. He further opined that there was no objective basis for appellant not being able to return to full duties, if they were available. Regarding the physical requirements of the permanent job in the machine shop division described in appellant's job description, Dr. Blankenship explained that there was no objective basis why appellant could not carry out the physical requirements of his job if they were available.

The Board finds that Dr. Blankenship's opinion is well rationalized and represents the weight of the medical evidence regarding appellant's accepted conditions. The Board also notes that there are no current reports from a treating physician to contradict these findings. Because appellant no longer has residuals or disability related to his accepted employment condition, OWCP properly terminated entitlement to wage-loss compensation and medical benefits effective March 10, 2017. Therefore, the Board finds that OWCP has met its burden of proof to terminate appellant's compensation benefits.

On appeal appellant argues that his employment injury continues and he was unable to return to work in a full-time capacity. He further argues that he was not offered a job in the machine shop, but the canvas shop and that he transferred to hazmat as a materials handler. As

⁸ See 20 C.F.R. § 10.320.

found above, the recent medical evidence of record establishes that appellant no longer has residuals or disability related to his accepted December 5, 1989 employment injury.

CONCLUSION

The Board finds that OWCP has met its burden of proof in terminating appellant's wage-loss compensation and medical benefits effective March 10, 2017.

ORDER

IT IS HEREBY ORDERED THAT the March 10, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 6, 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