

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

F.J., Appellant)	
)	
and)	Docket No. 17-0147
)	Issued: March 27, 2018
)	
U.S. POSTAL SERVICE, POST OFFICE,)	
Portland, OR, Employer)	
)	

Appearances:
Kevin Card, for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On October 27, 2016 appellant, through his representative, filed a timely appeal from a May 6, 2016 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 over the merits of this case.

ISSUES

The issues are: (1) whether OWCP properly terminated appellant's wage-loss compensation and medical benefits effective September 3, 2015 as he no longer had any residuals or disability causally related to his accepted employment injuries; and (2) whether appellant met

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.*

his burden of proof to establish any continuing employment-related residuals or disability after September 3, 2015.

On appeal appellant's representative contends that the medical report of Dr. Ronald Teed, a Board-certified orthopedic surgeon and second opinion physician, is insufficient to terminate appellant's compensation benefits as it is based on an incomplete statement of accepted facts (SOAF). He notes that the SOAF does not include appellant's September 10, 1990 accepted employment-related back condition and resultant surgery.

FACTUAL HISTORY

OWCP accepted that on February 6, 2004 appellant, then a 45-year-old city letter carrier, sustained an exacerbation of a herniated nucleus pulposus at L5-S1 and exacerbation of herniated nucleus pulposus at L4-5 when he squatted to lift a tub of mail at work. Appellant stopped work on the date of injury and received appropriate wage-loss compensation. This claim was developed under File No. xxxxxx340.

The record also reflects that appellant had prior claims that have been combined with File No. xxxxxx340. Under File No. xxxxxx384, OWCP accepted that appellant sustained a herniated disc at L5-S1 and aggravation of herniated disc at L5-S1 that began on September 10, 1990. It authorized a discectomy that was performed on October 8, 1990 and paid appellant appropriate wage-loss compensation. OWCP accepted that he sustained a cervical strain on November 29, 1991 in File No. xxxxxx433. It paid appropriate wage-loss compensation. On February 24, 2004 OWCP denied his claim for a recurrence of the November 29, 1991 injury. In File No. xxxxxx386, it accepted appellant's occupational disease claim for an aggravation of preexisting L4-5 and L5-S1 degenerative disc disease that resolved by October 6, 2003. Appellant indicated that he was recovering from this aggravation when he reinjured his back at work on February 6, 2004.

Appellant's treating physician, Dr. Walter R. Buhl, a Board-certified family practitioner, submitted reports noting that he could only work up to four hours a day within restrictions.

On August 12, 2008 appellant accepted the employing establishment's job offer for a modified city carrier position, four hours a day, five days a week. In an October 14, 2008 decision, OWCP found that his modified-duty position fairly and reasonably represented his wage-earning capacity and reduced his compensation benefits based on his actual earnings.

On July 29, 2010 appellant filed a recurrence of disability claim (Form CA-2a) alleging that on July 27, 2010 he stopped work due to the employing establishment's withdrawal of his limited-duty position.

By decision dated March 15, 2011, OWCP denied modification of its loss of wage-earning capacity (LWEC) determination. It found that appellant had not submitted evidence to establish that the original LWEC determination was erroneous, that there was a material change in his accepted medical conditions, or that he was otherwise retrained or vocationally rehabilitated.

In a September 14, 2011 decision, an OWCP hearing representative reversed the October 14, 2008 and March 15, 2011 decisions. He found that the October 14, 2008 LWEC determination was erroneous because the employing establishment's August 8, 2008 job offer was

for a temporary position and appellant was not a temporary employee at the time of his accepted injury. Thus, the hearing representative found that OWCP had improperly used appellant's actual earnings in determining his LWEC.

In a November 17, 2011 decision, OWCP accepted that appellant sustained a recurrence of disability commencing July 28, 2010 and paid disability compensation.

With respect to continuing employment-related disability, OWCP referred appellant, together with a SOAF, the medical record, and a list of questions, to Dr. Teed for a second opinion examination. The June 24, 2015 SOAF noted the history of File No. xxxxxx340. The SOAF advised that appellant had a laminectomy at L5-S1 in 1990 and referenced prior claims of appellant.

Appellant submitted a July 1, 2015 medical report from Dr. Buhl who noted appellant's back symptoms were increasing, described findings on physical examination, and diagnosed degenerative disc disease, lumbar spondylosis, and radiculopathy. Dr. Buhl continued to indicate that appellant could only work four hours a day within restrictions.

Appellant also submitted a July 9, 2015 lumbar x-ray report from Dr. Thomas Stoehr, a Board-certified radiologist, who provided an impression of no appreciable change in described degenerative conditions and no acute osseous abnormality was visualized.

In a July 16, 2015 report, Dr. Teed noted a history of the February 6, 2004 employment injuries and appellant's medical, family, and social background. He also noted that appellant had been diagnosed with spondylosis of the lumbar spine and stenosis and underwent lumbar surgery in 1990. Dr. Teed reviewed the case record, including the physical demand requirements of appellant's work conditions. On examination he reported that appellant was a slender, lean, and healthy-appearing male, in no acute distress. Appellant walked slowly across the examination room reporting low back pain while getting out of a chair and walking. He was able to walk on his heels and toes in the clinic. Dr. Teed indicated that a musculoskeletal examination revealed a spine that was straight and balanced with normal posture. There was a well-healed prior surgical incision over the lower lumbar spine. Range of motion of the lumbar spine using a dual inclinometer demonstrated 34 degrees of forward flexion, 12 degrees of extension, 46 degrees of right lateral bending, and 44 degrees of left lateral bending. There was tenderness to palpation over the right lower lumbar paraspinal musculature and sciatic notches on the right. Straight leg raising bilaterally at 45 degrees caused right-sided lower back pain and with straight leg raising on the right appellant complained about pain radiating down the posterior aspect of the right leg to the level of the calf. Dr. Teed noted that both lower extremities had 5/5 strength with 2+ deep tendon reflexes and a normal sensory examination, although appellant reported intermittent paresthesias over the plantar aspect of the right foot even though sensation to touch was intact.

Dr. Teed diagnosed chronic, preexisting, and unrelated spondylosis of the lumbar spine, unrelated status post lumbar laminectomy, resolved accepted exacerbation of herniated nucleus pulposus at L5-S1, and resolved accepted exacerbation of herniated nucleus pulposus at L4-5. He noted that the accepted conditions were not present and active. Dr. Teed noted that appellant had chronic preexisting spondylosis of the lumbar spine including an L4-5 and L5-S1 disc degeneration and protrusion. He related that his accepted condition was an exacerbation of his preexisting degenerative condition that was not expected to last longer than three months after the date of

injury, essentially a lumbar strain. Thus, Dr. Teed determined that appellant had reached medically stationary status on May 6, 2004 regarding his accepted conditions. He found that appellant had fully recovered from his February 6, 2004 employment injuries. Dr. Teed advised that his prognosis regarding his overall conditions may be guarded as he had chronic preexisting spondylosis of the lumbar spine with secondary pain, which would likely permanently limit him. He related that appellant had reached maximum medical improvement and was not likely to improve. Dr. Teed noted that appellant's chronic preexisting lumbar spondylosis secondary to stenosis was not related to the accepted work injuries. He found that appellant could return to his full work duties without restrictions and perform activities of daily living (ADLs). Dr. Teed noted that his work restrictions over the last 11 years were totally related to his chronic preexisting conditions. He recommended continued chronic pain management which was not related to a work injury or industrial disease.

In a work capacity evaluation (Form OWCP-5c) also dated July 16, 2015, Dr. Teed noted that appellant was not capable of performing his usual job without restriction, but stated that this was not work related. He could work four hours a day with physical restrictions that would apply for an indefinite time period.

By notice dated July 28, 2015, OWCP proposed to terminate wage-loss compensation and medical benefits as Dr. Teed found that appellant had no residuals or disability due to his accepted employment injuries. It afforded appellant 30 days to submit additional evidence or argument regarding the proposed termination.

In an August 13, 2015 letter, appellant disagreed with the proposed action. He contended that Dr. Teed only spent five minutes with him. Appellant noted inaccuracies in Dr. Teed's July 16, 2015 report and related that contrary to the physician's finding, he was not capable of performing ADLs. He maintained that reports from OWCP's prior referral physicians, Dr. Inad D. Atassi, a Board-certified neurosurgeon, and Dr. Robert W. H. Ho, an orthopedic surgeon, and prior impartial medical specialist, Dr. Thomas L. Gritzka, a Board-certified orthopedic surgeon, clearly refuted Dr. Teed's opinion that his condition should have resolved in three months.³

In a July 1, 2015 duty status report (Form CA-17), Dr. Buhl noted a history of the February 6, 2004 employment injuries and appellant's light/limited-duty work restrictions. On August 14, 2015 he described findings on physical examination and diagnosed adult muscular atrophy. In an August 18, 2015 letter, Dr. Buhl certified that appellant's current level of symptoms was directly related to nerve compression in his low back and related to his on-the-job accident. He noted that appellant's request to undergo a magnetic resonance imaging (MRI) scan last year

³ In an April 26, 2006 report, Dr. Ho diagnosed lumbar strain and radiculitis on the right. He opined that the accepted employment-related exacerbation of herniated disc at L4-5 on the right was permanent. Appellant still exhibited objective evidence of lower back and right lower extremity dysfunction. Dr. Ho opined that he was not capable of performing his full-time regular duties as a city letter carrier. In an April 28, 2007 report, Dr. Atassi diagnosed preexisting herniated lumbar discs at L4-3 and L5-S1 on the right that were permanently aggravated by the accepted February 6, 2014 employment injuries. He noted that appellant was status post laminectomy and discectomy at L5-S1 related to a prior claim. Dr. Atassi found that he had permanent residuals of the accepted work-related conditions. He concluded that appellant should continue to work four hours a day with restrictions. On June 14, 2012 Dr. Gritzka found that appellant was status post a 1990 L5-S1 hemilaminotomy and discectomy for intervertebral herniated disc. He diagnosed intervertebral disc herniation at L4-5 on the right and recurrent intervertebral disc herniation at L5-S1 on the right. Dr. Gritzka restricted appellant to light work, four hours a day with limitations.

had been denied. Dr. Buhl related that a January 30, 2013 lumbar MRI scan showed mild enhancing epidural scar formation at L4-5 and L5-S1, which were the levels of appellant's symptoms. At L4-5, there was impingement on the central and right aspects of the thecal sac with moderate-to-severe right and left lateral recess impingement and bilateral neural foraminal impingement. At L5-S1, there was a mild broad-based disc bulge with a small paracentral disc protrusion and articular facet degeneration. Dr. Buhl related that this resulted in mild impingements on the central and right aspects of the thecal sac, with mild-to-moderate neural foraminal impingement. He opined that these conditions were directly related to the same mechanism which caused the neural compromise at the time of appellant's original work injury.

By decision dated September 3, 2015, OWCP finalized the termination of appellant's wage-loss compensation and medical benefits, effective that date. It found that the weight of the medical opinion evidence rested with Dr. Teed's July 17, 2015 report, which opined that he no longer had any employment-related residuals or disability.

On September 25, 2015 appellant requested an oral hearing before an OWCP hearing representative. Later on March 10, 2016 he requested a review of the written record in lieu of an oral hearing.

Appellant submitted Dr. Buhl's September 24, 2015 form report, which noted that appellant could resume work that day, four hours a day with restrictions. In a form report dated November 19, 2015, Dr. Buhl advised that appellant could resume work on November 20, 2015, four hours a day with restrictions.

In reports dated November 19 and December 21, 2015, Dr. Paul M. Puziss, a Board-certified orthopedic surgeon, noted a history of the February 6, 2004 employment injuries and appellant's medical treatment and background. He provided findings on physical examination and reviewed February 6, 2004 and January 30, 2013 lumbar MRI scan test results. Dr. Puziss diagnosed chronic right L4-5 disc herniation, causing right L4 radiculopathy and possibly L5 radiculopathy. He also diagnosed a history of an L5-S1 discectomy performed in 1990 by Dr. John Stewart, a Board-certified orthopedic surgeon. In the November 19, 2015 report, Dr. Puziss related that appellant had ongoing right lumbar radiculopathy at L4 due to a chronic herniated disc. He indicated that, although Dr. Teed stated that appellant's underlying spondylosis was the remaining problem, his conclusion was clearly in error since appellant had an ongoing right L4-5 herniated disc which never disappeared and resolved. Dr. Puziss noted that appellant still had sciatica that had related radiculopathy. He related that a four-day-a-week work schedule had been reasonable since appellant's 2004 injury and was still reasonable based on that same injury. Dr. Puziss maintained that his reduced work schedule was not based on any ongoing spondylosis, but rather on his disc herniation. In the December 21, 2015 report, he noted that appellant's degenerative disc disease was unrelated and found that he did not have muscular dystrophy.

By decision dated May 6, 2016, an OWCP hearing representative affirmed the September 3, 2015 decision. She found that the medical evidence submitted was insufficient to outweigh the weight accorded to Dr. Teed's July 17, 2015 report.

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.⁴ It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁵ The burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶ The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁷ 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.⁸

ANALYSIS -- ISSUE 1

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective September 3, 2015. OWCP accepted that she sustained herniated nucleus pulposus at L5-S1 and an exacerbation of herniated nucleus pulposus at L4-5 while in the performance of duty on February 6, 2004. It terminated appellant's wage-loss compensation and medical benefits based on the medical opinion of Dr. Teed, a second opinion physician.

In his July 16, 2015 report, Dr. Teed described the February 6, 2004 employment injuries and reviewed appellant's medical treatment and the physical demand requirements of his job. He provided essentially normal findings on physical examination. Dr. Teed diagnosed chronic, preexisting, and unrelated spondylosis of the lumbar spine, unrelated status post lumbar laminectomy, and resolved accepted exacerbation of herniated nucleus pulposus at L5-S1 and herniated nucleus pulposus at L4-5. He found that appellant had reached maximum medical improvement as of May 6, 2004 as the accepted conditions were not expected to last longer than three months after the February 6, 2004 date of injury. Dr. Teed further found that appellant had fully recovered from the accepted injuries. He advised that his prognosis was guarded due to his chronic preexisting lumbar spondylosis with secondary pain secondary to stenosis, which was not related to the February 6, 2004 employment injuries. Dr. Teed noted that appellant's condition would not likely improve and would permanently limit him. He opined that he could return to his full work duties without restrictions and perform ADLs. Dr. Teed maintained that appellant's work restrictions over the last 11 years were totally related to his chronic preexisting lumbar condition.

⁴ *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁵ *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

⁶ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁷ *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁸ *A.P.*, Docket No. 08-1822 (issued August 5, 2009); *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002).

The Board finds that Dr. Teed's report represents the weight of the medical evidence and that OWCP properly relied on his report in terminating appellant's wage-loss compensation and medical benefits for the accepted condition on September 3, 2015. Dr. Teed's opinion is based on a proper factual and medical history as he reviewed the SOAF and his prior medical treatment. He also related his comprehensive examination findings in support of his opinion that appellant no longer had any residuals or disability causally related to the accepted traumatic lumbar injuries.

The Board finds that the remaining medical evidence submitted by appellant prior to the termination of his compensation is insufficient to show that he had any remaining work-related residuals or disability.

Dr. Buhl's August 18, 2015 report found that appellant's lumbar conditions were directly related to the February 6, 2004 work injuries, but he failed to provide any medical rationale in support of his conclusion. The Board has held that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship, which is unsupported by medical rationale.⁹ While Dr. Buhl diagnosed degenerative disc disease, lumbar spondylosis, radiculopathy, and adult muscular atrophy in his July 1 and August 14, 2015 reports, he did not attribute the diagnosed conditions to the accepted employment injuries. Similarly, in his July 1, 2015 Form CA-17 report, Dr. Buhl noted a history of the February 6, 2004 employment injuries and appellant's work restrictions, but did not provide an opinion addressing whether he had any continuing residuals or disability causally related to the accepted work injuries. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value.¹⁰ The Board finds, therefore, that Dr. Buhl's reports do not establish that appellant had continuing residuals or disability causally related to the February 6, 2004 work injuries.

Likewise, Dr. Stoehr's July 9, 2015 diagnostic test results are insufficient to establish continuing employment-related residuals or disability. He did not opine that appellant's diagnosed lumbar conditions and any resultant total disability were causally related to the accepted work injuries.¹¹

The Board finds that Dr. Teed's opinion that appellant had recovered from the employment injuries represents the weight of the medical evidence and the additional medical evidence submitted is insufficient to create a conflict in opinion regarding whether he had continuing residuals or disability causally related to the accepted injuries. Therefore, OWCP properly terminated his compensation, effective September 3, 2015, based on Dr. Teed's opinion.

On appeal appellant's representative contends that Dr. Teed's report was insufficient to terminate appellant's compensation benefits as it was based on an incomplete SOAF. He claimed that the SOAF did not include appellant's previously accepted employment-related back condition

⁹ *C.M.*, Docket No. 14-0088 (issued April 18, 2014); *T.M.*, Docket No. 08-0975 (issued February 6, 2009); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹⁰ *See C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, *id.*; *K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006).

¹¹ *Id.*

and resultant surgery. The Board notes, however, that the SOAF reviewed by Dr. Teed indicated that appellant underwent a laminectomy at L5-S1 in 1990. While appellant is correct in noting that the SOAF did not contain a discussion of his September 10, 1990 employment injury, there is no question that Dr. Teed was aware of the injury since he specifically noted it in his July 16, 2015 report. Appellant has failed to explain why Dr. Teed's report is of diminished value in light of the complete and accurate history provided in his report.

LEGAL PRECEDENT -- ISSUE 2

After OWCP has met its burden of proof to terminate compensation benefits, the burden for reinstating compensation benefits shifts to appellant to establish that he has any subsequent disability causally related to the accepted employment injury.¹² 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.¹³

ANALYSIS -- ISSUE 2

The Board finds that the medical evidence submitted following the September 3, 2015 termination decision was insufficient to establish that appellant had continuing residuals or disability after that date due to the February 6, 2004 employment injuries.

Appellant submitted Dr. Buhl's September 24 and November 19, 2015 reports. In these reports, Dr. Buhl released appellant to return to part-time work with restrictions. The Board finds that, as he did not opine that appellant had any prior or current residuals or disability due to the accepted work injuries, his reports are of limited probative value.¹⁴

Dr. Puziss' November 19 and December 21, 2015 reports found that appellant had chronic right L4-5 disc herniation causing right L4 radiculopathy, possibly L5, and a history of a 1990 L5-S1 discectomy. He disagreed with Dr. Teed's finding that appellant's underlying spondylosis was the remaining problem. Dr. Puziss maintained that appellant had an ongoing right L4-5 herniated disc, which never disappeared and resolved. However, he did not provide any medical rationale to support his opinion that appellant had continuing residuals of the February 6, 2004 employment injuries.¹⁵ Further, while Dr. Puziss maintained that appellant still had sciatica with related radiculopathy at L4 and possibly at L5 and required a limited work schedule, the Board notes that OWCP has not accepted appellant's claim for sciatica or lumbar radiculopathy. For conditions not accepted by OWCP as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not OWCP's burden to

¹² *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004); *Manuel Gill*, 52 ECAB 282 (2001); *George Servetas*, 43 ECAB 424, 430 (1992).

¹³ *T.M.*, *supra* note 9.

¹⁴ *Supra* note 10.

¹⁵ *Supra* note 9.

disprove such relationship.¹⁶ Dr. Puziss did not provide any medical rationale explaining why these conditions and appellant's work schedule restriction were causally related to the accepted employment injuries. For the reasons stated, the Board finds that Dr. Puziss' reports are of insufficient probative value to meet appellant's burden of proof.

The Board finds that appellant has not submitted sufficient medical evidence to establish that he has any continuing residuals or disability after September 3, 2015 causally related to the accepted injuries.¹⁷

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 properly terminated appellant's wage-loss compensation and medical benefits, effective September 3, 2015, as he no longer had any residuals or disability causally related to his accepted employment injuries. The Board further finds that appellant has not met his burden of proof to establish any continuing employment-related residuals or disability after September 3, 2015.

ORDER

IT IS HEREBY ORDERED THAT the May 6, 2016 decision of the Office of Workers' Compensation Programs is affirmed.¹⁸

Issued: March 27, 2018
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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

¹⁶ *G.A.*, Docket No. 09-2153 (issued June 10, 2010); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Alice J. Tysinger*, 51 ECAB 638 (2000).

¹⁷ *Virginia Davis-Banks*, 44 ECAB 389 (1993); *Dorothy Sidwell*, 41 ECAB 857 (1990).

¹⁸ Colleen Duffy Kiko, Judge, participated in this decision, but was no longer a member of the Board effective December 11, 2017.