

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

C.C., Appellant)	
)	
and)	Docket No. 17-1158
)	Issued: November 20, 2018
DEPARTMENT OF AGRICULTURE,)	
NATURAL RESOURCES CONSERVATION)	
SERVICE, Albany, NY, Employer)	
)	

Appearances:
Stephanie N. Leet, Esq., for the appellant¹
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 May 4, 2017 appellant, through counsel, filed a timely appeal from a November 30, 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.

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.*

ISSUE

The issue is whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective January 10, 2016 because she no longer had residuals of her February 15, 1996 employment injury.

FACTUAL HISTORY

On March 13, 1996 appellant, then a 38-year-old water quality liaison, filed a traumatic injury claim (Form CA-1) alleging that on February 15, 1996 she sustained injury at work in the form of concussion, headaches, nausea, contusions (head, neck, and back), and bruises of many locations. She indicated that when she was a passenger in a vehicle stopped at a red light, another vehicle failed to brake and hit the vehicle from behind. Appellant stopped work on February 20, 1996.³

The findings of February 15, 1996 x-ray testing of appellant's cervical spine, left wrist, and lumbar spine showed normal results. A February 29, 1996 magnetic resonance imaging (MRI) scan of her cervical spine contained an impression of straightening of the usual cervical lordotic curve in an otherwise normal MRI scan of the cervical spine.

On May 14, 1996 OWCP accepted appellant's claim for a cervical sprain.

A September 19, 1996 MRI scan of appellant's lumbar spine was found as essentially normal with minimal anterior disc space narrowing at L4-5 level with flexion. The findings of September 19, 1996 x-rays of her lumbar spine was found to be essentially normal with minimal disc space narrowing at L4-5.

Appellant began performing light-duty work on a full-time basis on September 10, 1999. She stopped work on February 4, 2000.⁴

In a June 14, 2000 report, Dr. John H. Kavanaugh, an attending Board-certified orthopedic surgeon, indicated that appellant presented complaining of neck and back pain. He noted that recent nerve conduction velocity studies were abnormal with respect to appellant's left upper extremity. Dr. Kavanaugh diagnosed chronic cervical and lumbar strains with post-traumatic fibromyalgia and indicated that she was totally disabled from work.

On May 1, 2002 Dr. Kavanaugh diagnosed acute chronic neck and back strains with degenerative disc disease, and he opined that appellant's symptoms were due to the February 15, 1996 employment injury. He noted that she was totally disabled due to the February 15, 1996 employment injury.

Appellant continued to remain off work and receive total disability compensation. The record contains few reports of medical care during the remainder of the decade. In an April 6,

³ Appellant returned to light-duty work on a part-time basis on March 9, 1997.

⁴ OWCP paid appellant disability compensation on the periodic rolls beginning June 16, 2002.

2011 report, Dr. Kavanaugh noted that appellant presented complaining of neck and back pain, and he indicated that her physical examination revealed limited range of motion of her back without neurological deficits. He advised that she was 100 percent disabled due to her February 15, 1996 employment injury.

In a June 2, 2014 report, Dr. Robert R. Reppy, an attending Board-certified family practitioner, noted that appellant presented for an initial evaluation complaining of neck pain radiating down into her hands and low back pain radiating down into her left foot. Appellant reported that she was involved in a motor vehicle accident at work on February 15, 1996. Dr. Reppy detailed physical examination findings from June 2, 2014, noting that she had reduced range of motion of her cervical spine, spasticity of her paracervical and trapezius muscles bilaterally, and 5/5 strength in her upper extremities. Appellant also exhibited reduced range of motion of her lumbar spine and spasticity of her paralumbar musculature. Dr. Reppy diagnosed chronic cervical sprain/strain, cervical disc disease with radiculopathy, chronic lumbar sprain/strain, and left-sided sciatica. He indicated that appellant was permanently disabled due to the injury she sustained at work on March 4, 2003.⁵

On June 4, 2015 OWCP referred appellant for a second opinion examination with Dr. Richard C. Smith, a Board-certified orthopedic surgeon. It requested that he provide an opinion regarding whether she continued to have residuals of her February 15, 1996 employment injury.

In a June 25, 2015 report, Dr. Smith discussed appellant's factual and medical history and noted that she presented chiefly complaining of left arm pain and neck pain. He reported the findings of the physical examination he conducted on June 25, 2015, noting that her neck had no tenderness to palpation or trigger points in various muscle groups, including the sternocleidomastoid, supraclavicular fossa, trapezius, levator scapulae, and rhomboid muscle groups. There also was no tenderness to palpation or trigger points in various bony processes of the neck. Dr. Smith found that appellant had 5/5 strength in the bilateral upper extremity muscle groups enervated by nerves associated with the C5 through T1 discs. The sensory examination in appellant's upper extremities yielded normal results.

Dr. Smith found that appellant had no ongoing residuals of the accepted cervical sprain she sustained on February 15, 1996. He noted that the type of injury she sustained on February 15, 1996 typically resolved within six to eight weeks, and he advised that she had age-related degenerative changes in her cervical spine. Dr. Smith opined that remaining medical problems appellant had would be related to age and expected disc degeneration, rather than to the February 15, 1996 motor vehicle accident. He indicated that the only injury she sustained in the February 15, 1996 vehicular accident had been a soft tissue injury in the form of a cervical sprain, which had fully resolved. Dr. Smith concluded that appellant had no residuals/disability due to her February 15, 1996 employment injury.

⁵ The case record does not otherwise contain an indication that appellant sustained an injury on March 4, 2003. She was not working for the employing establishment on March 4, 2003 as she receiving disability compensation at that time.

Appellant submitted a September 30, 2015 report from Dr. Reppy who noted that she presented for examination on that date with chief complaints of back, neck, and shoulder pain. Dr. Reppy detailed range of motion findings for her cervical and lumbar spines and diagnosed herniated discs with annular tears of L1-2 through L5-S1; facet arthropathy and foraminal stenosis at L4-5 and severe stenosis at L5-S1; anterolisthesis of C3 on C4 (grade 1); herniated disc with an annular tear at C3-4; and central stenosis at C5-6. He opined that the list of diagnoses accepted as related to the February 15, 1996 employment injury was inadequate, and noted that maintaining appellant still had a sprain after 19 years was “ridiculous on the face of it.” In a September 30, 2015 document entitled “Petition to Amend Accepted Diagnoses,” Dr. Reppy indicated that the current accepted diagnoses of cervical strain/sprain and lumbar sprain/strain should be dismissed.⁶ He asserted that the following diagnoses should be accepted as related to the February 15, 1996 employment injury: herniated discs with annular tears of L1-2 through L5-S1; anterolisthesis of L5 on S1 (grade 1); lumbar facet arthropathy; lumbar stenosis at L4-5 and L5-S1; anterolisthesis of C3 on C4 (grade 1); herniated disc with an annular tear at C3-4; and central stenosis at C5-6. Dr. Reppy indicated that these conditions were diagnosed in August 29, 2014 MRI scans of appellant’s cervical and lumbar spines. He noted that these conditions were “pathomechanically related to work” and indicated that his opinion was based on the medical records and his own examination.

In a November 18, 2015 letter, OWCP advised appellant of its proposed termination of her wage-loss compensation and medical benefits. It informed her that the proposed action was justified by Dr. Smith’s June 25, 2015 report. OWCP afforded appellant 30 days to submit evidence and argument challenging the proposed termination action.

In a December 4, 2015 letter, appellant discussed her medical treatment since February 15, 1996 and argued that she continued to have disabling residuals of her February 15, 1996 employment injury, as evidenced by the reports of Dr. Reppy.

By decision dated December 21, 2015, OWCP terminated appellant’s wage-loss compensation and medical benefits effective January 10, 2016. It determined that the weight of the medical opinion evidence rested with the second opinion of Dr. Smith. OWCP noted that in his June 25, 2015 report he provided a well-rationalized opinion finding that appellant ceased to have residuals of her February 15, 1996 employment injury. It noted that Dr. Reppy’s reports were not well rationalized with respect to causal relationship.

On January 20, 2016 appellant requested a hearing with a representative of OWCP’s Branch of Hearings and Review. During the hearing held on September 15, 2016, counsel argued that Dr. Reppy’s September 30, 2015 reports showed that appellant continued to have disabling residuals of her February 15, 1996 employment injury.

Appellant submitted January 6, February 24, and April 27, 2016 reports of Dr. Reppy. In these reports, Dr. Reppy again asserted that the following diagnoses should have been accepted as related to the February 15, 1996 employment injury: herniated discs with annular tears of L1-2

⁶ The Board notes that OWCP has not accepted any form of lumbar conditions related to the February 15, 1996 employment injury. Dr. Reppy indicated that to maintain that appellant still had a sprain/strain producing symptoms defied “reason, common sense, and accepted community medical standards.”

through L5-S1; anterolisthesis of L5 on S1 (grade 1); lumbar facet arthropathy; lumbar stenosis at L4-5 and L5-S1; anterolisthesis of C3 on C4 (grade 1); herniated disc with an annular tear at C3-4; and central stenosis at C5-6. In his February 24, 2016 report, he asserted that these types of conditions were commonly sustained in motor vehicle accidents and that the diagnoses were confirmed by 2014 MRI scans.

By decision dated November 30, 2016, OWCP's hearing representative affirmed OWCP's December 21, 2015 decision. The hearing representative found that the weight of the medical opinion evidence with respect to residuals of the February 15, 1996 employment injury rested with Dr. Smith's well rationalized June 25, 2015 report, and she therefore determined that OWCP's termination of appellant's wage-loss compensation and medical benefits effective January 10, 2016 was proper. She indicated that the reports of Dr. Reppy were not well rationalized with respect to causal relationship.

LEGAL PRECEDENT

Under FECA, once OWCP has accepted a claim it has the burden of proof to justify termination or modification of compensation benefits.⁷ OWCP may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁸ OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁹

ANALYSIS

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective January 10, 2016 because she no longer had residuals of her February 15, 1996 employment injury.

OWCP accepted that appellant sustained a cervical sprain due to a February 15, 1996 motor vehicle accident at work and paid total disability compensation. It terminated her wage-loss compensation and medical benefits effective January 10, 2016 based on the June 25, 2015 report of Dr. Smith, an OWCP referral physician.

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Smith. In his June 25, 2015 report, Dr. Smith provided an opinion that appellant had no residuals/disability of her February 15, 1996 employment injury.

In his June 25, 2015 report, Dr. Smith detailed the findings of the physical examination he conducted on that date, noting that appellant's neck had no tenderness to palpation or trigger points in various muscle groups and bony processes. He indicated that she had 5/5 strength in the bilateral upper extremity muscle groups enervated by nerves associated with the C5 through T1 discs, and he noted that the sensory examination in the upper extremities yielded normal results. Dr. Smith

⁷ *I.J.*, 59 ECAB 408 (2008); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

⁸ *Charles E. Minniss*, 40 ECAB 708, 716 (1989).

⁹ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

found that appellant had no ongoing residuals of the accepted cervical sprain she sustained on February 15, 1996. He noted that the type of injury she sustained on February 15, 1996 typically resolved within six to eight weeks, and he advised that she had age-related degenerative changes in her cervical spine. Dr. Smith indicated that the only injury appellant sustained in the February 15, 1996 vehicular accident had been a soft tissue injury in the form of a cervical sprain, which had fully resolved. He concluded that she had no residuals/disability due to her February 15, 1996 employment injury.

The Board has reviewed the opinion of Dr. Smith and notes that it has reliability, probative value, and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Smith provided a thorough factual and medical history and accurately summarized the relevant medical evidence.¹⁰ He provided medical rationale for his opinion by explaining that appellant suffered a relatively minor injury in 1996, a cervical sprain, and that she ceased to exhibit objective findings of the accepted employment injury. Dr. Smith further explained that her continuing medical problems were related to age and expected disc degeneration, rather than to the February 15, 1996 cervical sprain which had long since resolved.

Prior to termination of her compensation benefits effective January 10, 2016, appellant submitted two September 30, 2015 reports of Dr. Reppy, and argued that these reports showed that OWCP's termination action was unjustified.¹¹ The Board notes that, in these reports, he provided an opinion that her February 15, 1996 cervical sprain had resolved. However, in one of the September 30, 2015 reports, Dr. Reppy asserted that the following diagnoses should be accepted as related to the February 15, 1996 employment injury: herniated discs with annular tears of L1-2 through L5-S1; anterolisthesis of L5 on S1 (grade 1); lumbar facet arthropathy; lumbar stenosis at L4-5 and L5-S1; anterolisthesis of C3 on C4 (grade 1); herniated disc with an annular tear at C3-4; and central stenosis at C5-6.

The Board finds that Dr. Reppy's opinion is of limited probative value with regard to continuing residuals of the February 15, 1996 employment injury due to its lack of medical rationale on causal relationship. Dr. Reppy opined that appellant had disabling residuals due to multiple cervical conditions (other than cervical sprain) and multiple lumbar conditions, which he opined were related to the February 15, 1996 employment injury. However, OWCP has not accepted that these conditions were related to the February 15, 1996 employment injury. Moreover, Dr. Reppy did not provide a rationalized medical opinion establishing causal relationship between the additional diagnosed cervical/lumbar conditions and the February 15, 1996 employment injury.¹² Such medical rationale is particularly necessary due to the fact that

¹⁰ See *Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

¹¹ On appeal, counsel also argues that Dr. Reppy's reports show that OWCP's termination action was improper.

¹² Dr. Reppy merely noted that the additional conditions were "pathomechanically related to work" and indicated that his opinion was based on the medical records and his own examination.

diagnostic testing of appellant's cervical and lumbar spines obtained shortly after February 15, 1996 contained essentially normal results.¹³

CONCLUSION

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective January 10, 2016 because she had no longer had residuals of her February 15, 1996 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the November 30, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 20, 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

¹³ See *E.J.*, Docket No. 09-1481 (issued February 19, 2010) (finding that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how an employment injury is related to a given claimed condition). Appellant later submitted January 6, February 24, and April 27, 2016 reports in which Dr. Reppy again asserted that the diagnoses he listed on September 30, 2015 should have been accepted as related to the February 15, 1996 employment injury. In his February 24, 2016 report, Dr. Reppy noted that these types of conditions were commonly sustained in motor vehicle accidents and that the diagnoses were confirmed by 2014 MRI scans. However, these reports are of limited probative value regarding any existing employment-related residuals because they lack adequate medical rationale with respect to causal relationship. See *id.*