United States Department of Labor
Employees' Compensation Appeals Board

R.H., Appellant	)	
and	)	**Docket No. 18-0342**
	)	**Issued: November 29, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Miami, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 6, 2017 appellant filed a timely appeal from a December 1, 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 has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective March 10, 2017.

FACTUAL HISTORY

On July 11, 2002 appellant, then a 56-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that, while walking in rubber boots on that date, he slipped and fell, causing

[1] 5 U.S.C. § 8101 *et seq.*

injury to his left ankle and the right side of his back in the performance of duty.[2] He stopped work on July 12, 2002.

OWCP accepted the claim for left ankle contusion and lumbar sciatica.[3] Appellant was released to part-time work for two to three hours per day on November 20, 2002.

On a February 11, 2003 work capacity evaluation form (Form OWCP-5c) Dr. Kenneth Hodor, a Board-certified orthopedic surgeon, noted that appellant could not perform his duties as a letter carrier and restricted him to sedentary level work. He noted appellant could work for two hours at a time when sitting with the ability to get up and move about with light walking. On February 27, 2003 Dr. Hodor responded to an OWCP letter noting that, from an orthopedic standpoint, appellant was unable to perform an eight-hour workday and he could not perform the limited-duty job which had been created by the employing establishment.

Appellant had returned to work on February 3, 2003, but stopped work again on February 6, 2003 and has not returned. OWCP subsequently paid wage-loss compensation on the periodic rolls.

In April 2005, appellant was scheduled for a second opinion examination for OWCP to determine his physical condition and his ability to return to work. In a report dated April 5, 2005, Dr. Jerry S. Sher, a Board-certified orthopedic surgeon, noted that appellant had reached maximum medical improvement (MMI) with no residuals in his left ankle, but that his lumbar spine condition persisted and was chronic. He concluded that appellant was able to return to a full eight-hour workday with restrictions. OWCP determined that a conflict had been created in the medical evidence between Dr. Hodor and Dr. Sher as to appellant's residuals from his injury as well as his ability to return to work for an eight-hour workday. In a report dated September 9, 2005, Dr. Mitchell R. Pollak, an impartial medical examiner Board-certified in orthopedic and arthroscopic surgery, noted that appellant's diagnosed conditions included lumbar spondylosis, lumbar strain with lumbar disc bulging at the L4-5 and L5-S1 levels, and a resolved left ankle condition. He noted that appellant was able to work, but with restrictions to avoid heavy lifting, bending, prolonged standing, and/or walking.

Appellant continued to seek treatment with his attending physician. In a note dated July 7, 2008, Dr. Hodor examined appellant and noted that he was able to ambulate with a standard cane, but observed that there was no isolated motor weakness at either lower extremity. He noted that appellant had relocated to Arkansas where he lived with his wife in the woods, as he stated that he could not get along with people. Medications were noted to be limited to Tylenol two to three times per day. Dr. Hodor concluded that at that juncture appellant remained fully retired and was unable to work in his previous job or in any work due to his inability to sit, stand, squat, or bend with his lifting restrictions.

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[2] Appellant has a history of asthma, peptic ulcer disease, gastrointestinal bleeding, hepatitis, hypertension, and arthritis. He also noted that he sustained a back injury when he was "blown off" a bunker while serving in Vietnam in 1966.

[3] The record reflects that appellant had preexisting lumbar spondylosis with degenerative disc disease and stenosis.

On July 27, 2011 OWCP notified appellant that it had scheduled a second opinion medical evaluation to assess the status of his work-related condition, including the extent of disability and appropriate treatment. In a report dated October 5, 2011, Dr. Thomas P. Rooney, a second opinion physician Board-certified in orthopedic surgery, noted his findings on physical examination. He reported that appellant was cooperative, tearful, anxious, and continuously groaned and jerked his body. Appellant was able to stand and walk with most of his weight on a cane. Upon standing, his cervical, thoracic, and lumbar spine was noted to have normal curvature. Appellant was noted to complain of pain mostly in the lumbosacral spine, but straight leg raising, sitting, and supine were all negative. There was no swelling in the left ankle and there was full motion with no instability. Dr. Rooney concluded that appellant was able to return to work in his regular position for eight hours per day.

In a June 2, 2014 report, Dr. Hodor noted that he saw appellant, who was ambulating with a standard cane in his right hand. He explained that appellant and his wife were still living in Arkansas, which took about three days for them to drive in to Florida. Dr. Hodor indicated that appellant had to change position frequently because of the persistent pain and burning sensation to the right of the midline at L4-5, L5-S1. He also noted that the pain radiated into the right lower extremity primarily in the S1-S2 dermatome, but at times overlying the L5 dermatome proximal to the knee. Dr. Hodor advised that appellant was placed on hypnotic now, which helped with his mood swings and agitation, which he noted were improved. He also indicated that appellant was on blood pressure medication with no recent history of any problems in conjunction with the medication he was taking for his ongoing orthopedic problem. Dr. Hodor indicated that appellant's pain was primarily neuropathic in type with a sharp and shooting electric-type sensation more to the right of the midline than left. He examined appellant and found that he had difficulty bearing full weight on the right often keeping his heel off the ground. Dr. Hodor explained that appellant related that it was easier for him to ambulate, but he explained to appellant the importance of heel, foot flat, and push off gait to avoid progressive difficulty. He also found ongoing hypertonicity within the paraspinal muscles at L3-4, L4-5, L5-S1; restricted motion by 50 percent in the left lateral bending and left lateral rotation. Dr. Hodor also indicated that appellant had a positive right seated straight leg raise, negative on the left; intact motor power and diminished appreciation to pinwheel in the L5-S1 dermatome distal to the knee. He advised that he had explained the importance of appellant continuing his range of motion exercises for his back and advised him to try and find a gym that had an aquatic facility. Dr. Hodor also noted that appellant was keeping his weight fairly stable and he had no adverse effects from his anti-inflammatories. He related that he also prescribed Tramadol since appellant indicated that at times the Naprosyn was not enough to eliminate all of his pain. Dr. Hodor indicated that he would see appellant again in nine months.

OWCP continued to develop the claim and requested periodic updates. In the May 1, 2014 letter, it requested that appellant provide the letter to his physician for review and a comprehensive medical report. OWCP requested an update with regard to whether the accepted work-related conditions were still active and causing objective symptoms. It also requested that he provide an update regarding appellant's ability to work.

By letters dated June 29 and July 1, 2016, OWCP referred appellant for a second opinion to assess the work-related condition. Dr. William F. Blankenship, a second opinion physician

Board-certified orthopedic surgery, was provided a SOAF, a set of questions, and the medical record.

In a July 28, 2016 report, Dr. Blankenship noted his evaluation findings and reported that appellant carried a cane on the right and had on a rigid cervical collar. He found no list, scoliosis, or paraspinal muscle spasm, however, he noted that appellant indicated that his back hurts even in the standing position. Dr. Blankenship found that clinically, no paraspinal muscle spasm could be seen or palpated, the knee and ankle jerks were depressed, but equal bilaterally and straight leg raising was negative bilaterally. He found no clonus or Babinski on either side. It was also observed that there was no weakness of the anterior tibialis, extensor halluces tongue, short toe flexors, or peroneals on either side.

Dr. Blankenship revealed that his examination of the left ankle demonstrated no swelling or deformity and there was a negative Thompson's test on the left ankle in which compression of the call produced passive plantar flexion of the left foot and ankle. He found active dorsiflexion was neutral and active plantar flexion was to 60 degrees past neutral. Dr. Blankenship diagnosed sprain of left ankle, resolved and lumbosacral strain by history. He opined that the subjective complaints remained what appellant exhibited, however, he found no objective findings of radiculopathy regarding appellant's lower back complaints. Dr. Blankenship also indicated that the left ankle injury had resolved and would have resolved within 14 to 21 weeks of injury. He advised that there were no other conditions that were associated with or could be aggravated by his lower back and left ankle injuries, except for his preexisting back condition. Dr. Blankenship noted that appellant was still taking medication for that prior injury, which occurred in 1994. He concluded that there was no objective basis for an aggravation of a preexisting condition. Dr. Blankenship further advised that there was no basis why he could not resume activities or full duties. He opined that, with appellant's large amount of subjective complaints, it was doubtful that he would ever return to restricted duty. Dr. Blankenship noted that appellant briefly returned to work and only worked one day.

On February 7, 2017 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits based upon the findings of the second opinion specialist, Dr. Blankenship. It found that the weight of the medical evidence established that he no longer had residuals or continuing disability from work due to his accepted employment injury. OWCP afforded him 30 days to submit additional evidence or argument if he disagreed with the proposed termination.

Appellant submitted a letter dated February 28, 2017 requesting additional time to obtain additional medical evidence. He also described his condition and indicated that he continued to live with pain from his injuries. Appellant also noted that he had been found 100 percent disabled by the Department of Veterans Affairs. He also indicated that as far back as 2002, Dr. Hodor had diagnosed lumbar radiculitis.

Appellant also submitted evidence previously of record. OWCP received a copy of an August 27, 2002 report from Dr. Hodor, who diagnosed lumbar radiculitis and checked a box marked "yes" advising that it was caused or aggravated by an employment activity. It also received a copy of Dr. Hodor's June 2, 2014 report and a form of the same date

On March 10, 2017 OWCP finalized the termination of appellant's wage-loss compensation and medical benefits, effective that date, finding that the medical evidence of record failed to support continued residuals related to the work injury of July 11, 2002. It relied upon the report of the second opinion physician, Dr. Blankenship, an orthopedic surgeon. OWCP explained that the residuals related to the accepted work-related medical conditions had ceased and appellant was no longer disabled from work as a result of the accepted injury on July 11, 2002. It found that Dr. Blankenship provided a well-reasoned and unequivocal medical opinion based upon a complete, accurate, and consistent history covering both factual and medical aspects of the case.

On March 21, 2017 appellant requested an oral hearing, which was held before an OWCP hearing representative on September 18, 2017. No new evidence was received.

By decision dated December 1, 2017, OWCP's hearing representative affirmed the March 10, 2017 decision. She found that the report from Dr. Blankenship was unequivocal and sufficient to carry the weight of the medical evidence.

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 appellant no longer has residuals of an employment-related condition which require further medical treatment.[7]

ANALYSIS

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

The Board finds that Dr. Blankenship's July 28, 2016 second opinion report is sufficiently well-rationalized and based upon a proper factual background such that it is entitled to carry the weight in establishing that residuals of appellant's employment injuries had ceased. Dr. Blankenship provided an extensive review of appellant's medical history, which included a preexisting back condition, and reported his examination findings. He explained appellant exhibited subjective complaints, but he found no objective findings of radiculopathy regarding appellant's lower back complaints. Dr. Blankenship also indicated that the left ankle injury had resolved and would have resolved within 14 to 21 weeks of the date of injury. He advised that

[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).

there were no other conditions that were associated with or could be aggravated by his lower back and left ankle injuries, except for his stated preinjury before the July 11, 2002 employment injury. Dr. Blankenship noted that appellant was still taking medication for that injury, which occurred in 1994. He concluded that there was no objective basis for an aggravation of a preexisting condition. Dr. Blankenship further explained that there was no basis why appellant could not resume activities or full duties. He opined that with appellant's large amount of subjective complaints, it was doubtful that he would ever return to restricted duty. Dr. Blankenship noted that appellant briefly returned to work and only worked one day. He explained that there were no objective findings to support appellant's subjective complaints in the lumbar spine and the left ankle condition had resolved.

Subsequent to the evaluation by Dr. Blankenship and prior to the termination of benefits, OWCP received copies of reports from Dr. Hodor dated August 27, 2002 and June 2, 2014. The Board notes that these reports were previously of record. Moreover, the reports were from several years prior to the termination and were irrelevant as they did not offer any opinion about the nature or extent of appellant's disability on or after March 10, 2017.[8] Thus, the additional reports from Dr. Hodor are insufficient to overcome or create a new conflict with the opinion of Dr. Blankenship.

The Board finds Dr. Blankenship's opinion to be probative evidence and reliable and sufficient to justify OWCP's termination of appellant's wage-loss compensation and medical benefits for the accepted conditions of left ankle contusion and lumbar sciatica. There is no contemporaneous medical evidence of equal weight supporting appellant's claim for continuing disability compensation and medical benefits.[9]

On appeal appellant asserts that he continued to suffer from his employment-related conditions and that Dr. Blankenship's opinion was insufficient to meet OWCP's burden of proof to terminate his compensation and medical benefits. As found above, it met its burden of proof to justify termination of benefits, effective March 10, 2017, as the medical evidence established that appellant ceased to have any disability or condition causally related to the accepted employment injuries.

CONCLUSION

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

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[8] *See L.V.*, Docket No. 17-1260 (issued August 1, 2018).

[9] *See K.E.*, Docket No. 17-1216 (issued February 22, 2018).

ORDER

IT IS HEREBY ORDERED THAT the December 1, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 29, 2018
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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