

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

T.L., Appellant	)	
	)	
and	)	<b>Docket No. 18-0536</b>
	)	<b>Issued: November 27, 2018</b>
	)	
DEPARTMENT OF HOMELAND SECURITY,	)	
TRANSPORTATION SECURITY	)	
ADMINISTRATION, 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  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On January 18, 2018 appellant filed a timely appeal from a September 15, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective May 3, 2015; and (2) whether appellant has met his burden of proof to establish continuing employment-related disability or residuals after May 3, 2015 causally related to the accepted October 17, 2005 employment injury.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On November 17, 2005 appellant, then a 60-year-old lead transportation security screener, filed a traumatic injury claim (Form CA-1) alleging that on October 17, 2005 he injured his neck and shoulders while clearing bags from a “CTX machine.” He stopped work on October 18, 2005 and returned to limited-duty work on December 26, 2005. Appellant again stopped work on February 2, 2006.

By decision dated February 23, 2006, OWCP denied appellant’s traumatic injury claim. It accepted that the October 17, 2005 incident occurred as alleged, but denied the claim as he failed to submit sufficient probative medical evidence to establish a medical condition causally related to the accepted employment incident.

Appellant subsequently requested an oral hearing before an OWCP hearing representative. By decision dated July 10, 2006, the hearing representative reversed the February 23, 2006 decision and accepted appellant’s claim for cervical strain and right shoulder impingement.

OWCP authorized appellant’s September 20, 2007 anterior cervical discectomy and fusion at C4-5/C5-6 with allograft and anterior plate (Trinica).

On December 6, 2007 OWCP expanded the acceptance of appellant’s claim to include aggravation of cervical disc disease and other left shoulder conditions. It authorized left shoulder arthroscopy, labral repair, and subacromial decompression which were performed on February 15 and December 15, 2007.

Appellant returned to work in a limited-duty lead transportation security officer position on July 22, 2008, but stopped work on July 26, 2008. He has not returned to work.

On March 9, 2009 the employing establishment offered appellant another limited-duty lead transportation security officer position. On March 13, 2009 appellant refused the job offer.<sup>2</sup>

By decision dated May 14, 2010, OWCP terminated appellant’s entitlement to compensation for wage-loss and schedule award compensation benefits, effective that same date, as he refused an offer of suitable work pursuant to 5 U.S.C. § 8106(c)(2). By decision dated September 21, 2010, an OWCP hearing representative affirmed the May 14, 2010 termination decision.

Appellant requested reconsideration on September 28, 2011. By decision dated December 16, 2011, OWCP reviewed the merits of the claim and vacated the suitable work termination decision, finding that the prior decision incorrectly determined that he had failed to cooperate with a functional capacity evaluation. It paid appellant disability compensation on the supplemental rolls retroactive to May 15, 2010.

Appellant submitted reports dated November 13 and December 5, 2014 from Dr. Thomas Hurd, an attending Board-certified interventional pain medicine specialist and anesthesiologist.

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<sup>2</sup> Appellant retired from the employing establishment on disability, effective August 29, 2009.

Dr. Hurd noted that appellant reported improved neck and lower back pain with medication. He described examination findings and listed the primary assessment as lumbar and cervical radiculopathy with secondary assessments of post-lumbar laminectomy syndrome, postcervical laminectomy syndrome, and chronic opioid therapy. In response to an OWCP development questionnaire, Dr. Hurd noted that appellant could not return to his prior job. He advised that appellant could only perform sedentary work with certain physical restrictions.

On December 29, 2014 OWCP referred appellant, together with a statement of accepted facts (SOAF),<sup>3</sup> the medical record, and a list of questions, to Dr. Alexander N. Doman, a Board-certified orthopedic surgeon, for a second opinion to determine whether appellant had continuing disability and residuals due to his accepted October 17, 2005 employment injury.

OWCP received a report dated January 12, 2015 from Dr. Michael Schaufele, a Board-certified physiatrist and interventional pain medicine specialist. Dr. Schaufele reported findings on examination and listed appellant's current diagnoses as generalized osteoarthritis in the shoulder, postlumbar laminectomy syndrome, lumbar radiculopathy, postcervical laminectomy syndrome, and cervical radiculopathy. He also noted that appellant had pain in the left pelvis/thigh joint. Dr. Schaufele advised that appellant's current function was stable.

Dr. Doman, in a February 20, 2015 report, reviewed the SOAF and medical record. He related appellant's description of the history of his October 17, 2005 employment injuries and medical treatment. On physical examination Dr. Doman reported no acute distress. There was only mild decreased range of motion of the cervical spine. There was also a well-healed surgical scar. Grip strength and manual dexterity were normal. Range of motion of the left and right shoulders was excellent. Rotator cuff strength was normal in both shoulders. There were no signs of rotator cuff atrophy. There was also no instability of the left or right shoulder. Deep tendon reflexes of the upper extremities were intact. Sensation was intact. Dr. Doman reviewed x-rays of the cervical spine which showed a solid anterior cervical fusion of C4 to C6 with plate fixation. X-rays of the left shoulder showed no degenerative changes. The acromion had a normal flat contour. No osteophytes were noted. X-rays of the right shoulder showed no degenerative arthritis. The acromion had a normal contour. No osteophytes were noted.

In response to OWCP's questions, Dr. Doman indicated that the accepted conditions of cervical sprain, right shoulder impingement, aggravation of cervical disc disease, and other left shoulder disorder had resolved. He reasoned that there were no objective findings based on his examination to support that these conditions resulting from appellant's October 17, 2005 work injury were still present. Dr. Doman noted that appellant's conditions had resolved as x-rays showed a solid cervical fusion from C4 to C6. In addition, there were no neurologic deficits, rotator cuff strength was excellent on both the left and right shoulders with no evidence of instability, and x-rays of the left and right shoulders showed excellent overall alignment of the glenohumeral joint. Dr. Doman advised that no further treatment or medication was necessary to treat these conditions if they had resolved. He further advised that appellant was capable of returning to full-duty work as a lead transportation screener without restrictions. In a work capacity evaluation (Form OWCP-5c) dated February 12, 2015, Dr. Doman reiterated his opinion

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<sup>3</sup> The SOAF noted the accepted injuries, appellant's medical treatment, and the duties of his date-of-injury position and subsequent modified position.

that appellant could perform his usual job without restrictions and that he had reached maximum medical improvement. He noted that appellant had a nonwork-related lumbar condition that may limit his activity.

On March 12, 2015 OWCP provided appellant with a notice of proposed termination of his wage-loss compensation and medical benefits because he no longer had disability or residuals of his accepted employment-related conditions. It determined that the weight of the medical evidence rested with the February 20, 2015 report of Dr. Doman. Appellant was afforded 30 days to submit additional evidence or argument.

OWCP received an additional report dated March 19, 2015 from Dr. Hurd who noted appellant's history and discussed examination findings. Dr. Hurd restated his prior assessments of lumbar and cervical postlaminectomy syndrome and cervical spondylosis and noted that appellant was undergoing chronic opioid therapy.

In a letter dated April 2, 2015, appellant responded to OWCP's proposal to terminate his wage-loss compensation and medical benefits and disagreed with its finding that he had no employment-related residuals or disability. He contended that OWCP should have accorded the weight of the medical evidence to Dr. Hurd who had continually treated him since his injury. Appellant asserted that Dr. Doman did not mention his cervical range of motion, which reduced his activity level. He denied that he had excellent range of motion of both shoulders as found by Dr. Doman. Appellant was amazed that Dr. Doman found that he could return to full-duty work with no restrictions, although Dr. Doman noted that he had a nonwork-related lumbar condition that may limit his activity and may have been aggravated by his work at the employing establishment. He suggested that a functional capacity evaluation was needed before OWCP could accurately prepare a SOAF.

By decision dated April 27, 2015, OWCP finalized the termination of appellant's wage-loss compensation and medical benefits, effective May 3, 2015. It found that the weight of the medical opinion evidence rested with Dr. Doman who reported that he no longer had residuals or disability stemming from the accepted employment injuries.

On April 26, 2016 appellant requested reconsideration of the April 27, 2015 termination decision and submitted additional medical evidence. In a July 24, 2015 cervical spine magnetic resonance imaging (MRI) scan report, Dr. Michael Reed, a Board-certified orthopedic surgeon, provided an impression of anterior discectomies and anterior spinal fusion at C4-5 and C5-6, and no residual or recurrent disc protrusions or extrusions, or surgical complication or postoperative fibrosis. He also provided an impression of moderate degenerative disc disease and moderate right foraminal stenosis at C6-7, small central disc extrusion at C7-T1, and facet osteoarthritis at C2-3, C3-4, and C7-T1.

In a letter dated March 30, 2016, Dr. Hurd noted that appellant had a history of a cervical employment injury. He also noted a history of his treatment of appellant's neck condition. Dr. Hurd referenced findings from his March 25, 2016 examination and a July 24, 2015 cervical spine MRI scan. He related that findings of restriction of movement of the cervical spine along with sensory and motor dysfunction were consistent with the expected deterioration below appellant's fusion and, therefore, would be related to his original work injury. With regard to his

shoulders, Dr. Hurd related that he had decreased range of motion as noted in his examination above, which included both flexion and abduction. He agreed that appellant had minimal alteration of his rotator cuff function. Nonetheless, Dr. Hurd could not raise appellant's arms significantly above his shoulder due to shoulder impingement. He indicated that, although the previous examiner, upon whom the adverse decision regarding appellant was based, described full range of motion, he did not specify the degrees of motion of the glenohumeral joint. Dr. Hurd maintained that while examinations can vary from day to day depending upon a patient's muscle tone and pain, appellant recently had a physical therapy evaluation on March 4, 2016, which demonstrated a more limited cervical range of motion. He indicated that this was consistent with his most recent examination. Dr. Hurd believed, therefore, that the shoulder injury was still active and impingement was still present. To a reasonable degree of medical certainty, he opined that appellant was not capable of returning to full-duty work as a lead transportation screener based on the examination and imaging test findings described above. Dr. Hurd further opined that appellant's current abilities were improved by the fact that he was on pain medication. He maintained that if he were not on this medication, his function and range of motion would be more severely impaired. Dr. Hurd summarized that appellant had continuing issues with his cervical spine, including weakness in his arm and sensory findings other than pain. He also had limitation of his range of motion of his shoulders secondary to impingement. Dr. Hurd concluded that appellant should continue to receive benefits.

OWCP subsequently received a report dated May 15, 2015 from Dr. Jordan L. Tate, Board-certified in pain medicine. Dr. Tate examined appellant and assessed him as having cervical spondylosis, lumbar and cervical postlaminectomy syndrome, and chronic opioid therapy.

By decision dated June 14, 2016, OWCP conducted a merit review of appellant's claim and denied modification of the April 27, 2015 decision. It found that the medical evidence submitted was insufficient to outweigh the weight accorded to Dr. Doman's February 20, 2015 report.

In an appeal request form and letter received on June 11, 2017 by OWCP, appellant again requested reconsideration. He submitted his official lead transportation security officer position description.

Appellant also submitted additional medical evidence. In a November 14, 2011 operative report, Dr. Vladimiro Giua, a Board-certified internist, indicated that he performed bilateral laminectomy for decompression at L2, L3, L4, L5, and S1; bilateral facetectomy for decompression at L2 through S1; bilateral foraminotomy for decompression at L2 through S1; microscopic discectomy at L5-S1; and lateral intertransverse fusion using autograft bone, demineralized bone matrix at L2 through S1 and S2.

An unsigned and partial report dated September 15, 2016 from Georgia Pain Spine Centers noted appellant's chief complaint of bilateral neck pain right worse than left. The report listed his cervical and lumbar diagnoses as spondylosis without myelopathy or radiculopathy, cervical region, unspecified osteoarthritis, unspecified site, right and left hip pain, spinal enthesopathy, lumbar region, postlaminectomy syndrome, not elsewhere classified, cervical disc disorder with radiculopathy, unspecified cervical region, intervertebral disc disorders with radiculopathy, lumbar

region, long-term (current) use of opiate analgesic, radiculopathy, cervical region, cervicalgia, and tendinitis, not otherwise specified.

In a partial report dated January 13, 2017, Dr. Mirza S. Beg, a Board-certified neurologist and internist, indicated that appellant presented for a pain management evaluation. He noted his chief complaint of neck and low back pain. Dr. Beg related appellant's chronic history of neck and low back pain and medical treatment.

In a March 3, 2017 report, Dr. Sanjay Sastry, an addiction psychiatrist, noted appellant's complaints of neck and upper and low back pain radiating into his bilateral shoulders and down his arms with tingling. He also noted his medical history and described findings on physical and psychiatric examination. Dr. Sastry assessed appellant as having cervical radiculopathy, cervical degenerative disc disease, and postlaminectomy syndrome.

By decision dated September 15, 2017, OWCP again reviewed the merits of appellant's claim, but denied modification of the June 14, 2016 termination decision. It found that the medical evidence submitted was insufficient to outweigh Dr. Doman's opinion.

### **LEGAL PRECEDENT -- ISSUE 1**

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of an employee's benefits.<sup>4</sup> It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.<sup>5</sup> The burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>6</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.<sup>7</sup> 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.<sup>8</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective May 3, 2015.

OWCP properly accorded the weight of the medical evidence to the opinion of Dr. Doman, a second opinion physician. In his February 20, 2015 report, Dr. Doman described appellant's history and medical treatment. He provided essentially normal findings on physical and x-ray

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

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

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

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

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

examination with the exception of mild decreased range of motion of the cervical spine. Dr. Doman opined that appellant's accepted October 17, 2005 cervical sprain, right shoulder impingement, and aggravation of cervical disc disease had resolved and that no further medical treatment for these conditions was warranted. He reasoned that there were no objective findings on diagnostic testing or physical examination to support that appellant still had residuals of the accepted conditions. Dr. Doman noted that the cervical and bilateral shoulder x-rays provided normal findings. He opined that appellant could return to full-duty work as a lead transportation security screener with no restrictions and any limitation was based on a nonwork-related lumbar condition.

The Board finds that Dr. Doman's opinion that appellant had recovered from the accepted employment injury represents the weight of the medical evidence. Dr. Doman's report was based upon a proper factual background and a thorough medical examination. His report provided the proper medical rationale for his opinion that the residuals of the accepted conditions had ceased as he explained that appellant had no objective findings of this condition. The Board finds that Dr. Doman's report constitutes the weight of the medical evidence and establishes that appellant no longer has disability or residuals of the accepted employment injury.<sup>9</sup> Therefore, OWCP properly terminated his compensation, effective May 3, 2015, based on Dr. Doman's opinion.

The remaining evidence submitted by appellant prior to the termination of his wage-loss compensation and medical benefits is insufficient to establish that he had work-related disability or residuals. The November 13 and December 5, 2014 and March 19, 2015 reports from Dr. Hurd noted appellant's lumbar and cervical conditions, but failed to provide an opinion addressing whether the diagnosed conditions and any resultant disability were causally related to the accepted October 17, 2005 employment injuries. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.<sup>10</sup> Dr. Hurd's response to OWCP's development questionnaire indicated that while appellant could not return to his prior job, he could only perform sedentary work with certain physical restrictions. He did not opine that appellant was totally disabled from work or that appellant's work restrictions were related to the accepted employment injury.<sup>11</sup> Therefore, the Board finds that Dr. Hurd's reports do not establish that appellant had continuing residuals or disability due to the October 17, 2005 work injuries.

Further, the January 12, 2015 report from Dr. Schaufele is insufficient to establish employment-related disability or residuals. Dr. Schaufele did not provide a rationalized medical opinion that appellant's diagnosed neck, shoulder, lumbar, and cervical conditions and any resultant total disability were causally related to the accepted work injuries.<sup>12</sup>

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<sup>9</sup> See *Louise C. Hilton*, Docket No. 04-2203 (issued September 19, 2005).

<sup>10</sup> See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

Appellant provided no current medical evidence from a treating physician supporting that he was disabled or had residuals of his accepted conditions prior to the termination of his wage-loss compensation and medical benefits. Therefore, OWCP properly terminated his compensation effective May 3, 2015 based on Dr. Doman's opinion.<sup>13</sup>

On appeal appellant contends that Dr. Doman's report cannot constitute the weight of the medical opinion evidence as it was solely based on x-ray results. Contrary to appellant's contention, however, the Board finds that Dr. Doman's opinion was based on a thorough examination and he found no objective evidence of disability or residuals due to the accepted October 17, 2005 employment-related conditions.

### **LEGAL PRECEDENT -- ISSUE 2**

It is well established that after termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden of proof for reinstating compensation shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative, and substantial evidence that he or she had employment-related residuals or disability, which continued after the termination of compensation benefits.<sup>14</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that appellant has not met his burden of proof to establish continued residuals or disability causally related to the accepted October 17, 2005 injury after May 3, 2015.<sup>15</sup>

Appellant submitted a March 30, 2016 report from Dr. Hurd who opined that appellant still had residuals of his accepted right shoulder impingement and that he could not return to full-duty work as a lead transportation screener. Dr. Hurd maintained that his opinion regarding appellant's continuing conditions was based on his examination findings of decreased range of motion of the cervical spine and bilateral shoulders, arm weakness, and sensory findings other than pain, and the July 24, 2015 cervical spine MRI scan results. He concluded that appellant should continue to receive benefits. While Dr. Hurd's report offers medical opinion evidence that appellant had continuing employment-related residuals and disability, it does not sufficiently explain how appellant's current bilateral shoulder and cervical spine conditions are causally related to the accepted employment injuries. A medical opinion not fortified by medical rationale is of diminished probative value.<sup>16</sup> Because Dr. Hurd failed to provide sufficient medical rationale for his conclusion, his opinion is of diminished probative value.

The reports from Drs. Tate, Reed, and Sastry addressed appellant's cervical and lumbar conditions, but as none of the physicians offered an opinion that appellant had continuing disability

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<sup>13</sup> *Manuel Gill*, 52 ECAB 282 (2001).

<sup>14</sup> *Talmadge Miller*, 47 ECAB 673, 679 (1996); *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

<sup>15</sup> *See id.*; *Virginia Davis-Banks*, 44 ECAB 389 (1993).

<sup>16</sup> *W.W.*, Docket No. 09-1619 (issued June 2, 2010).

or residuals as a result of the accepted October 17, 2005 injury, their reports are of no probative value.<sup>17</sup>

Likewise, Dr. Giua's November 14, 2011 operative report is of insufficient probative value to meet appellant's burden of proof. He did not address appellant's continuing disability or provide a rationalized medical opinion that he continued to experience residuals of his employment-related injury.<sup>18</sup>

The January 13, 2017 partial report of Dr. Beg noted appellant's chief complaint of neck and low back pain, which was aggravated by activity, lifting, bending, and standing for prolonged periods and alleviated with various medical treatments. The Board has held that pain is a symptom, not a compensable medical diagnosis.<sup>19</sup> For the reasons stated, the Board finds that Dr. Beg's report is of insufficient probative value to meet appellant's burden of proof.

The September 15, 2016 report from Georgia Pain Spine Centers is unsigned. The Board has held that unsigned reports and reports that bear illegible signatures cannot be considered probative medical evidence because they lack proper identification.<sup>20</sup> Thus, this report is of no probative value.

The Board finds that appellant has not submitted sufficient medical evidence to establish that he has continuing residuals or disability after May 3, 2015 causally related to the accepted injury.<sup>21</sup> Appellant, therefore has not met his burden of proof.

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 has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective May 3, 2015. The Board further finds that he has not met his burden of proof to establish continuing employment-related residuals or disability after May 3, 2015.

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<sup>17</sup> *Supra* note 10.

<sup>18</sup> *T.W.*, Docket No. 09-0649 (issued October 26, 2009).

<sup>19</sup> *S.R.*, Docket No. 14-0733 (issued August 18, 2015).

<sup>20</sup> *Tommy Scales*, Docket No. 04-1979 (issued February 2, 2005).

<sup>21</sup> *Supra* note 15; *Dorothy Sidwell*, 41 ECAB 857 (1990).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 15, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 27, 2018  
Washington, DC

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

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

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