

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

G.F., Appellant)	
)	
and)	Docket No. 18-0908
)	Issued: July 5, 2019
DEPARTMENT OF THE NAVY, PUGET)	
SOUND NAVAL SHIPYARD, Bremerton, WA,)	
Employer)	
)	

Appearances: *Case Submitted on the Record*
John Eiler Goodwin, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 26, 2018 appellant, through counsel, filed a timely appeal from a September 27, 2017 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.³

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.*

³ Together with his appeal request, appellant submitted a timely request for oral argument pursuant to 20 C.F.R. § 501.5(b). After exercising its discretion, by order dated July 5, 2018, the Board denied the request as appellant's arguments on appeal could be adequately addressed in a decision based on a review of the case as submitted on the record. *Order Denying Request for Oral Argument*, Docket No. 18-0908 (issued July 5, 2018).

ISSUE

The issue is whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits commencing December 29, 2016 because he had no residuals of his accepted April 16, 1996 employment injury after that date.

FACTUAL HISTORY

OWCP accepted that on April 16, 1996 appellant, then a 40-year-old maintenance mechanic, sustained a low back strain, cervical strain, bilateral shoulder strains, and temporary aggravation of ankylosing spondylitis when he attempted to hold an unstable oil barrel upright while in the performance of duty. Appellant stopped work on April 16, 1996 and OWCP paid wage-loss compensation under OWCP File No. xxxxxx253.⁴

Appellant received treatment for his medical condition, since 2003, from Dr. John F. Hillyer, a Board-certified anesthesiologist. In a June 14, 2006 report, Dr. Hillyer reported his findings of the physical examination he conducted on that date. He diagnosed ankylosing spondylitis, polyarthralgias, and chronic neck, shoulder, and back pain. For the following decade, the record contains no report of a substantive physical examination conducted by a physician.

In a January 25, 2016 report, Douglas Stamp, an attending physician assistant, provided a diagnosis of back sprain/strain.

Due to the paucity of medical evidence in the case record, in October 2016 OWCP referred appellant for a second examination with Dr. Vicki Kalen, a Board-certified orthopedic surgeon. It provided Dr. Kalen with a statement of accepted facts (SOAF) which listed the accepted conditions due to the April 16, 1996 employment injury as low back strain, cervical strain, bilateral shoulder strains, and temporary aggravation of ankylosing spondylitis. OWCP requested that Dr. Kalen provide an opinion regarding whether appellant continued to have residuals or disability from the April 16, 1996 employment injury.

In an October 27, 2016 report, Dr. Kalen detailed appellant's factual and medical history and reported the findings of the physical examination she conducted on that date. She indicated that the examination revealed that appellant had 5/5 strength in all motor groups of his upper and lower extremities and that he did not have any sensory deficits. There was reduced range of motion of the neck, shoulders, and back. Dr. Kalen noted that appellant's gait was slow and mildly wide, but that it was otherwise normal and was not antalgic. She indicated that the employment-related conditions of low back strain, cervical strain, bilateral shoulder strains, and temporary aggravation of ankylosing spondylitis had long since resolved. Dr. Kalen opined that appellant's reduced range of motion of the neck, shoulders, and back was due to the natural progression of his preexisting ankylosing spondylitis. She maintained that this opinion was supported by the fact that the

⁴ Under a separate file (OWCP File No. xxxxxx233), OWCP had previously accepted that appellant sustained a traumatic lumbosacral strain on July 10, 1995. Appellant was off work for the period July 10 to 30, 1995 due to the July 10, 1995 employment injury. The Board notes that the July 10, 1995 employment injury is not the subject of the present appeal. OWCP administratively combined OWCP File No. xxxxxx253 with OWCP File No. xxxxxx233 and designated OWCP File No. xxxxxx253 as the master file.

decreased range of motion was symmetric and that appellant was neurologically fully intact. Dr. Kalen concluded that appellant had no disability or other residuals from his April 16, 1996 employment injury. She attached an October 27, 2016 work capacity evaluation form (Form OWCP-5c) which contained work restrictions, but she specifically indicated that the restrictions were for the nonwork-related conditions of psoriatic arthritis, Reiter's disease, and ankylosing spondylitis.⁵

In a November 9, 2016 letter, OWCP advised appellant that it proposed to terminate his wage-loss compensation and medical benefits based on the well-rationalized October 27, 2016 report of Dr. Kalen, OWCP's referral physician. It afforded him 30 days to submit evidence or argument challenging the proposed termination action.

Appellant submitted a November 22, 2016 report in which Dr. Hillyer indicated that appellant's "chronic lumbar strain[-]related injury exacerbated his [ankylosing] spondylitis which is not likely to improve." Dr. Hillyer reported that appellant continued to need medication to manage his pain symptoms.

By decision dated December 29, 2016, OWCP terminated appellant's wage-loss compensation and medical benefits commencing that same date based on the October 27, 2016 report of Dr. Kalen, finding that there were no employment-related disability or residuals.

Appellant, through counsel, requested a hearing with a representative of OWCP's Branch of Hearings and Review. During the hearing held on July 20, 2017, counsel argued that Dr. Kalen failed to adequately address all of appellant's accepted work-related conditions because OWCP actually accepted his claim for permanent aggravation of ankylosing spondylitis, rather than only temporary aggravation of ankylosing spondylitis. Counsel asserted that this position was supported by the fact that the case record contained several informational letters which listed "ankylosing spondylitis" as an accepted employment condition related to the April 16, 1996 employment injury, including an April 15, 2008 letter through which OWCP requested additional medical evidence.

By decision dated September 27, 2017, OWCP's hearing representative affirmed OWCP's December 29, 2016 decision finding that the weight of the medical evidence with respect to residuals of appellant's April 16, 1996 employment injury continued to rest with the opinion of Dr. Kalen.

LEGAL PRECEDENT

Under FECA, once OWCP has accepted a claim it has the burden of justifying termination or modification of compensation benefits.⁶ OWCP may not terminate compensation without

⁵ Dr. Kalen indicated that the nonwork-related ankylosing spondylitis was the most prominent cause for the work restrictions.

⁶ *C.C.*, Docket No. 17-1158 (issued November 20, 2018); *I.J.*, 59 ECAB 408 (2008); *Vivien L. Minor*, 37 ECAB 541 (1986).

establishing that the disability ceased or that it was no longer related to the employment.⁷ OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁸

ANALYSIS

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits commencing December 29, 2016 because he had no residuals of his accepted April 16, 1996 employment injury after that date.

In an October 27, 2016 report, Dr. Kalen indicated that the physical examination she conducted on that date revealed that appellant had 5/5 strength in all motor groups of his upper and lower extremities and that he did not have any sensory deficits. She indicated that the employment-related conditions of low back strain, cervical strain, bilateral shoulder strains, and temporary aggravation of ankylosing spondylitis had long since resolved. Dr. Kalen opined that appellant's reduced range of motion of the neck, shoulders, and back was due to the natural progression of his preexisting ankylosing spondylitis. She maintained that this opinion was supported by the fact that the decreased range of motion was symmetric and that appellant was neurologically fully intact. Dr. Kalen concluded that appellant had no disability or other residuals of his April 16, 1996 employment injury.⁹

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Kalen, OWCP's referral physician. The October 27, 2016 report of Dr. Kalen establishes that appellant had no residuals of his April 16, 1996 employment injury after December 29, 2016.

The Board has carefully reviewed the opinion of Dr. Kalen 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. Kalen provided a thorough factual and medical history and accurately summarized the relevant medical evidence. She provided medical rationale for her opinion by explaining that appellant ceased to exhibit objective findings of the medical conditions accepted in connection with his April 16, 1996 employment injury. Dr. Kalen further indicated that appellant's continuing problems could be explained by nonwork-related conditions, including

⁷ A.D., Docket No. 18-0497 (issued July 25, 2018). In general the term disability under FECA means incapacity because of injury in employment to earn the wages which the employee was receiving at the time of such injury. See 20 C.F.R. § 10.5(f).

⁸ See C.C., *supra* note 6.

⁹ Dr. Kalen attached an October 27, 2016 work capacity evaluation form which contained work restrictions, but she specifically indicated that the restrictions were for the nonwork-related conditions of psoriatic arthritis, Reiter's disease, and ankylosing spondylitis.

psoriatic arthritis, Reiter's disease, and the natural progression of his preexisting ankylosing spondylitis.¹⁰

On appeal counsel argues that Dr. Kalen failed to adequately address all of appellant's accepted work conditions because OWCP actually accepted his claim for permanent aggravation of ankylosing spondylitis, rather than only temporary aggravation of ankylosing spondylitis. He asserts that this position is supported by the fact that the case record contains several informational letters which list "ankylosing spondylitis" as an accepted employment condition related to the April 16, 1996 employment injury. The Board notes, however, that counsel has not provided adequate support for this argument. Counsel has not sufficiently explained why OWCP's inadvertent use of the phrase "ankylosing spondylitis" without any qualifying phrase would lead to the conclusion that OWCP expanded appellant's accepted conditions to include permanent aggravation of ankylosing spondylitis. He has not identified any document which would unequivocally show that OWCP has accepted appellant's claim for permanent aggravation of ankylosing spondylitis.

Prior to OWCP's termination action, appellant submitted a November 22, 2016 report in which Dr. Hillyer indicated that appellant's "chronic lumbar strain-related injury exacerbated his [ankylosing] spondylitis which is not likely to improve." Although Dr. Hillyer suggested that appellant continued to have residuals of an employment injury, his report is of limited probative value because he did not provide any medical rationale in support of this conclusory opinion. 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.¹¹

The Board, therefore, finds that OWCP properly terminated appellant's wage-loss compensation and medical benefits, effective December 29, 2016.

CONCLUSION

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits commencing December 29, 2016 because he had no residuals of his accepted April 16, 1996 employment injury after that date.

¹⁰ See *W.C.*, Docket No. 18-1386 (issued January 22, 2019); *Melvina Jackson*, 38 ECAB 443 (1987) (regarding the importance, when assessing medical evidence, of such factors as a physician's knowledge of the facts and medical history, and the care of analysis manifested and the medical rationale expressed in support of the physician's opinion).

¹¹ *C.M.*, Docket No. 14-0088 (issued April 18, 2014).

ORDER

IT IS HEREBY ORDERED THAT the September 27, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 5, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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