

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

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<b>H.Y., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 18-1673</b>
	)	<b>Issued: May 20, 2019</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>East Rockaway, NY, Employer</b>	)	
_____	)	

*Appearances:*  
*Appellant, pro se*  
*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 September 4, 2018 appellant filed a timely appeal from March 16 and May 11, 2018 merit decisions 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.<sup>2</sup>

**ISSUES**

The issues are: (1) whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective March 16, 2018, as he no longer had residuals or disability causally related to the accepted January 6, 2001 employment injury; and

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

<sup>2</sup> The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

(2) whether appellant has met his burden of proof to establish continuing residuals or disability after March 16, 2018 causally related to the accepted employment injury.

### **FACTUAL HISTORY**

On January 6, 2001 appellant, then a 34-year-old part-time flexible (PTF) carrier, filed a traumatic injury claim (Form CA-1) alleging that, on that date, he slipped and fell hitting his head while in the performance of duty. He stopped work on the date of injury and sought treatment in the emergency room. OWCP accepted the claim for multiple contusions, sprain of the neck, and sprain of the lumbosacral joint. Appellant returned to work on February 5, 2001 in a full-time limited-duty position, but stopped work again on December 7, 2002. OWCP paid him intermittent wage-loss compensation on the supplemental rolls as of December 14, 2002 and on the periodic rolls as of June 15, 2003.

In a December 19, 2013 work capacity evaluation (Form OWCP-5c), Dr. Rizwan Q. Dar, a Board-certified internist, reported that appellant was unable to work in any capacity for one year due to constant back pain.

In a letter dated June 24, 2014, OWCP requested that appellant provide comprehensive medical reports from his treating physician regarding the current status of his condition. It afforded him 60 days to provide the requested evidence. No additional medical information was received except for copies of medical prescriptions dated January 6 and June 16, 2016.

On November 23, 2016 and February 28, 2017 OWCP referred appellant, along with a statement of accepted facts (SOAF), a set of questions, and the medical record, to Dr. D. Burke Haskins, a Board-certified orthopedic surgeon, for a second opinion regarding the status of his work-related conditions.

In a March 28, 2017 report, Dr. Haskins noted appellant's history of injury and treatment and detailed the findings of the physical examination he conducted on that date. He observed that appellant ambulated with a cane alternating between his left and right side. Dr. Haskins described objective findings on examination, but noted that appellant either complained of pain or indicated that he was unable to participate in various positions, despite no obvious limitation of motion of the hips, sensory changes in either lower extremity, and normal alignment of the neck. He found that the objective findings suggested significant symptom magnification or nonorganic conditions contributing to appellant's complaints. Dr. Haskins diagnosed resolved contusion multiple sites, resolved sprain of neck, and resolved sprain of lumbosacral joint. He indicated that the degenerative changes noted were unrelated to appellant's work injury and not accepted. Dr. Haskins opined that appellant had made a full orthopedic recovery from the January 6, 2001 employment injury with no residuals attributable to the accepted conditions. He indicated that there was no disability or residuals associated with the accepted neck and lumbosacral joint sprains and that appellant had demonstrated significant symptom magnification based on the physical examination or nonorganic causes for pain. From an orthopedic perspective, Dr. Haskins opined that appellant had reached maximum medical improvement (MMI) and was capable of full-duty work without restrictions, as of March 30, 2017. He also completed a work capacity evaluation (Form OWCP-5c).

In a June 22, 2017 letter, the employing establishment advised appellant that his preinjury assignment that he held in 2001 was available for him. Appellant was instructed to report to work on June 27, 2017. He did not report to work.

In a July 27, 2017 letter, OWCP advised appellant that it proposed to terminate his wage-loss compensation and medical benefits because he no longer had residuals or disability of his January 6, 2001 employment injury. It afforded him 30 days to submit additional evidence and argument if he disagreed with the proposed termination.

In a July 24, 2017 report, Dr. Anil A. Verma, a Board-certified internist, noted that appellant was seen for chronic lower back pain with muscle spasms and muscle weakness of his left leg. He indicated that appellant had a work-related injury on January 6, 2001, returned to work in 2002, but his pain recurred and worsened and that he had not worked since 2003. Dr. Verma reported examination findings and provided an assessment of post-traumatic myofascitis, multilevel lumbar disc disease, based on abnormal November 14, 2002 magnetic resonance imaging (MRI) scan, lumbar spine radiculopathy, leg weakness, severe pain and sensory impairment due to radiculopathy. He opined that appellant's current physical impairment was a result of the work-related accident on January 6, 2001.

In letters dated October 30, 2017 and February 14, 2018, OWCP requested that Dr. Verma provide a comprehensive narrative medical report with objective evidence addressing appellant's ability to return to work, specifically addressing the accepted work-related conditions. No additional evidence was received.

By decision dated March 16, 2018, OWCP finalized the termination of appellant's wage-loss compensation and medical benefits, effective that date, finding that the medical evidence of record was insufficient to support continued residuals or disability causally related to the January 6, 2001 accepted employment injury. It relied upon the report of Dr. Haskins, an OWCP referral physician, who opined that the residuals of the accepted work-related conditions ceased and that appellant was no longer disabled from work as a result of the accepted conditions.

On April 30, 2018 appellant requested reconsideration.

In an April 3, 2018 report, Dr. Samuel J. Potolicchio, a Board-certified neurologist, indicated that appellant had a longstanding history of low back pain and radicular symptoms. He noted that appellant, a letter carrier, had slipped on ice on January 6, 2001 and since that time has had excruciating back pain, which had not changed over the past 17 years and was related to his employment injury. Dr. Potolicchio noted that appellant walked with a cane, limping. He indicated that appellant was unable to pick up his legs because of the pain in his lower back. Dr. Potolicchio estimated appellant's leg strength to be 2/5. Reflexes were symmetric and no pathological reflexes were elicited. Dr. Potolicchio opined that, based on clinical findings, appellant was unable to work due to his employment-related injury. In an April 23, 2018 work capacity evaluation form (Form OWCP 5-c), he noted that appellant had reached MMI and that he was totally disabled from any work. No diagnosis was provided in either report.

By decision dated May 11, 2018, OWCP denied modification of its prior decision. It found that Dr. Potolicchio's report was not rationalized and was devoid of any physical or objective findings to support continued employment-related disability.

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

Once OWCP accepts a claim and pays compensation, it bears the burden of proof to justify modification or termination of benefits.<sup>3</sup> It may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.<sup>4</sup> OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>5</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.<sup>6</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>7</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 March 16, 2018, as he no longer had residuals or disability causally related to the accepted January 6, 2001 employment injury.

In terminating appellant's wage-loss compensation and medical benefits, effective March 16, 2018, OWCP relied on the medical opinion of Dr. Haskins, an OWCP referral physician, to find that appellant's accepted conditions had resolved and that he was no longer disabled from work as a result of the accepted conditions.

In his March 28, 2017 report, Dr. Haskins noted appellant's history of injury and treatment and detailed the findings of the physical examination he conducted on that date. He described objective findings on examination noting that appellant had demonstrated significant symptom magnification based on the physical examination or nonorganic causes for pain which contributed to appellant's complaints. Dr. Haskins opined that the accepted conditions of contusion multiple sites, neck sprain, and sprain of lumbosacral joint had resolved and that there were no residuals attributable to the January 6, 2001 employment injury. He indicated that the degenerative changes were unrelated to appellant's work injury and not accepted. Dr. Haskins opined that appellant had made a full orthopedic recovery from the January 6, 2001 employment injury and that there was

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<sup>3</sup> See *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

<sup>4</sup> See *R.P.*, *id.*; *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

<sup>5</sup> See *R.P.*, *supra* note 3; *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

<sup>6</sup> See *R.P.*, *supra* note 3; *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005); *A.P.*, Docket No. 08-1822 (issued August 5, 2009); *Furman G. Peake*, 41 ECAB 361, 364 (1990).

<sup>7</sup> See *R.P.*, *supra* note 3; *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002); *Furman G. Peake*, *id.*

no remaining disability or residuals associated with the accepted neck and lumbosacral joint sprains. From an orthopedic perspective, he opined that appellant had reached MMI and was capable of full-duty work without restrictions, as of March 30, 2017.

The Board has carefully reviewed the opinion of Dr. Haskins and finds that it has reliability, probative value, and convincing quality with respect to its conclusions regarding the relevant issue.<sup>8</sup> Dr. Haskins' opinion is based on a proper factual and medical history and he thoroughly reviewed the SOAF and medical records.<sup>9</sup> He specifically opined that appellant's degenerative changes were unrelated to the work injury and that the accepted conditions had resolved. Dr. Haskins further noted that appellant had demonstrated significant symptom magnification based on the physical examination or nonorganic causes for pain which contributed to his complaints. Given the above findings, he opined that appellant had made a full orthopedic recovery from the January 6, 2001 employment injury and that there was no disability or residuals associated with the accepted neck and lumbosacral joint sprains. From an orthopedic perspective, Dr. Haskins opined that appellant had reached MMI and was capable of full-duty work without restrictions, as of March 30, 2017. As he provided a sufficiently rationalized explanation that appellant was no longer experiencing disability or residuals related to the January 6, 2001 employment injury, the Board finds that Dr. Haskins' opinion is entitled to the weight of the evidence.<sup>10</sup>

The additional medical evidence submitted prior to the termination of appellant's wage-loss compensation and medical benefits is insufficient to overcome the weight accorded to Dr. Haskins' opinion. Dr. Dar's December 19, 2013 work capacity evaluation form indicated that appellant was unable to work in any capacity for one year due to constant back pain. The Board has consistently held that pain is a symptom and not a compensable medical diagnosis.<sup>11</sup> Further, Dr. Dar has not offered a medical opinion regarding the cause of appellant's back pain<sup>12</sup> and he failed to address whether appellant continued to have residuals of his accepted conditions that required further medical treatment.<sup>13</sup> For these reasons, Dr. Dar's work capacity evaluation form is insufficient to overcome the weight of the medical evidence as represented by Dr. Haskins.

In a July 24, 2017 report, Dr. Anil A. Verma, a Board-certified internist, noted that appellant had a work-related injury on January 6, 2001 and that he had not worked since 2003 as his pain recurred and worsened. He provided an assessment of post-traumatic myofascitis, multilevel lumbar disc disease, based on abnormal November 14, 2002 magnetic resonance imaging (MRI) scan, lumbar spine radiculopathy, leg weakness, severe pain and sensory

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<sup>8</sup> See *L.W.*, Docket No. 18-1372 (issued February 27, 2019); *R.W.*, Docket No. 12-0375 (issued October 28, 2013).

<sup>9</sup> See *L.W., id., M.H.*, Docket No. 17-0210 (issued July 3, 2018); *Melvina Jackson*, 38 ECAB 443 (1987).

<sup>10</sup> *C.S.*, Docket No. 12-0163 (issued February 21, 2013).

<sup>11</sup> *E.S.*, Docket No. 18-1750 (issued March 11, 2018).

<sup>12</sup> Medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship. See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>13</sup> See *S.M.*, Docket No. 18-0673 (issued January 25, 2019).

impairment due to radiculopathy. Dr. Verma opined that appellant's current conditions were the result of the January 6, 2001 employment injury. OWCP has not accepted the conditions assessed by Dr. Verma and he failed to offer medical rationale supported by objective findings to support his opinion on causal relationship.<sup>14</sup> A mere conclusion without necessary rationale explaining why the physician believes that a claimant's accepted employment incident resulted in the diagnosed condition is not sufficient.<sup>15</sup> Moreover, Dr. Verma failed to address whether appellant continued to have residuals of his accepted neck and lumbosacral strain conditions that required further medical treatment.<sup>16</sup> While OWCP had requested that he provide a medical report addressing appellant's ability to work due to the accepted conditions, no such report was received. Thus, Dr. Verma's opinion is therefore insufficient to support employment-related disability or residuals.

The Board finds that as appellant no longer has disability or residuals causally related to his accepted employment injury, OWCP properly terminated entitlement to wage-loss compensation and medical benefits, effective March 16, 2018.<sup>17</sup> Accordingly, OWCP has met its burden of proof.<sup>18</sup>

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

Once OWCP properly terminates compensation benefits, the burden shifts to appellant to establish that he has continuing disability causally related to the accepted employment injury.<sup>19</sup> To establish causal relationship between the disability claimed and the employment injury, appellant must submit rationalized medical evidence or opinion based on a complete medical and factual background supporting causal relationship.<sup>20</sup> Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.<sup>21</sup>

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<sup>14</sup> See *Jaja K. Asaramo*, 55 ECAB 200 (2004) (for conditions not accepted by OWCP as due to a work injury, the claimant bears the burden of proof to establish that the condition is causally related to the work injury).

<sup>15</sup> *S.K.*, Docket No. 15-0384 (issued May 7, 2015).

<sup>16</sup> See *S.M.*, *supra* note 13.

<sup>17</sup> *G.I.*, Docket No. 13-0019 (issued April 2, 2013).

<sup>18</sup> *L.C.*, Docket No. 12-1177 (issued August 19, 2013); *D.M.*, Docket No. 11-0386 (issued February 2, 2012); *Marshall E. White*, 33 ECAB 1666 (1982).

<sup>19</sup> See *D.M.*, Docket No. 17-1052 (issued January 24, 2019); *J.R.*, Docket No. 17-1352 (issued August 13, 2018).

<sup>20</sup> See *D.M.*, *id.*; *A.C.*, Docket No. 16-1670 (issued April 6, 2018); *R.D.*, Docket No. 16-0892 (issued December 20, 2016).

<sup>21</sup> *D.A.*, Docket No. 18-1726 (issued April 2, 2019); *Paul Foster*, 56 ECAB 208 (2004); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

## **ANALYSIS -- ISSUE 2**

The Board finds that appellant has not met his burden of proof to establish continuing residuals or disability after March 16, 2018 causally related to the accepted employment injury.

Following OWCP's termination of appellant's wage-loss compensation and medical benefits, effective March 16, 2018, appellant submitted an April 3, 2018 report and an April 23, 2018 work capacity evaluation form in which Dr. Potolicchio opined that appellant remained totally disabled from his low back pain and the work-related injury. However, Dr. Potolicchio did not diagnose a specific condition or specifically address causal relationship by explaining how appellant's continuing residuals and disability from work and need for further medical treatment were causally related to the accepted conditions related to the January 6, 2001 employment injury.<sup>22</sup> Appellant, therefore, has not established continuing residuals or disability after March 16, 2018 causally related to the accepted employment injury.<sup>23</sup>

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 March 16, 2018, as he no longer had residuals or disability causally related to the accepted January 6, 2001 employment injury. The Board further finds that appellant has not met his burden of proof to establish continuing residuals or disability after March 16, 2018 causally related to the accepted employment injury.

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<sup>22</sup> See *G.P.*, Docket No. 17-0039 (issued July 14, 2017).

<sup>23</sup> See *G.P.*, *id.*; *Virginia Davis-Banks*, 44 ECAB 389 (1993).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 11 and March 16, 2018 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 20, 2019  
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