



## ISSUES

The issues are: (1) whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective April 29, 2018; and (2) whether appellant established continuing employment-related disability or residuals on or after April 29, 2018.

## FACTUAL HISTORY

On March 15, 2007 appellant, then a 36-year-old airway transportation system specialist, filed a traumatic injury claim (Form CA-1) alleging that on March 14, 2007 he slipped off a diesel fuel tank and fell approximately six feet to the ground, landing on his back while in the performance of duty. He stopped work on March 14, 2007 and received continuation of pay. OWCP accepted appellant's claim for lumbar sprain. It ultimately placed him on the periodic compensation rolls effective May 8, 2011.<sup>4</sup> OWCP also expanded acceptance of appellant's claim to include cervical strain as an accepted condition. Appellant remained on the periodic rolls, receiving wage-loss compensation for temporary total disability.

On August 16, 2016 Dr. Yumila Barreto, a Board-certified internist, treated appellant in follow-up for chronic neck and low back pain radiating into the bilateral lower extremities. He noted a medical history of C5-6 degenerative joint disease, foramina encroachment at C5-6, L5-S1 bulging disc, mild degeneration at L5-S1, bilateral S1 joint dysfunction, and bilateral facet syndrome. Findings on examination revealed decreased strength on plantar flexion of the left foot, calf, and quadriceps. Dr. Barreto diagnosed chronic neck and low back pain due to a herniated disc at L5-S1 and degeneration of intervertebral discs at L5-S1 and C5, C6, and C7. He opined that excessive weight gain worsened his physical condition, especially his back. In a work capacity evaluation (Form OWCP-5c) dated August 16, 2016, Dr. Barreto diagnosed chronic neck and low back pain. He opined that appellant could not work eight hours a day due to chronic neck and back pain and because of sedation from medication. Dr. Barreto advised that the restrictions were permanent. On August 29, 2017 he saw appellant and opined that he was not capable of working full time.

On October 12, 2017 OWCP referred appellant to Dr. P. Kent Thrush, a Board-certified orthopedic surgeon, for a second opinion examination.

In a report dated November 1, 2017, Dr. Thrush discussed appellant's history of an employment injury on March 14, 2007 and reviewed the evidence of record, including the results of diagnostic testing. On examination he found appellant had a significant limp and used a cane; limited range of motion of the lumbar and cervical spine; positive and equal reflexes in the upper and lower extremity; and normal perception of touch in the upper and lower extremities. Dr. Thrush found no objective evidence of lumbar strain and opined that this condition resolved within three to six months of the date of injury. He indicated that appellant's current conditions and complaints relate to grade 1 degenerative disc disease at L5-S1. Dr. Thrush noted findings of degenerative arthritis and degenerative disc disease on the first magnetic resonance imaging (MRI) scan on April 20, 2007 and opined within a reasonable degree of medical certainty that this was a preexisting condition. He noted that there was no objective evidence of aggravation, acceleration, exacerbation, or precipitation of the preexisting degenerative conditions. Dr. Thrush opined that

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<sup>4</sup> Because appellant was unavailable for duty for medical reasons, the employing establishment removed him from service effective April 2, 2010.

the degenerative findings in the lumbar and cervical spine were age-related and preexisting conditions. He indicated that appellant had objective evidence of degenerative arthritis and degenerative disc disease and noted the findings at L5-S1 were mild and unchanged on MRI scans from 2007 to 2014. Dr. Thrush noted that appellant required no ongoing medical treatment related to the lumbar sprain diagnosis. He advised that appellant's subjective pain far exceeded the objective findings on the MRI scans of the lumbar and cervical spine as these findings would not normally result in poor balance, unrelenting pain, the need for a cane, or bedrest for 22 hours a day. Dr. Thrush found appellant to be totally disabled secondary to subjective pain which was disproportionate to his objective findings. In a work capacity evaluation (Form OWCP-5c), dated November 1, 2017, he noted no disability for the lumbar sprain, but total disability due to the mild-to-moderate degenerative disc disease with severe subjective pain.

On December 4, 2017 OWCP requested that Dr. Thrush clarify whether appellant was totally disabled and in need of ongoing treatment related to the accepted employment injuries. In an addendum report dated December 11, 2017, Dr. Thrush concluded that objectively appellant no longer remained totally disabled and in need of ongoing treatment directly related to the accepted work injuries of lumbar and cervical strain which resolved within three to six months of the injury. Rather, he opined that appellant's subjective symptoms were related to nonwork-related underlying early degenerative arthritis and degenerative disc disease. Dr. Thrush noted that because of appellant's extreme subjective symptoms it was unlikely he would ever return to gainful employment.

On January 9, 2018 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits as the evidence of record established that he no longer had employment-related residuals or disability due to his accepted sprain of the back, lumbar region and sprain of the neck. It afforded him 30 day to submit additional evidence or argument, in writing, if he disagreed with the proposed termination.

Thereafter, OWCP received a March 26, 2018 report from Dr. Barreto who treated appellant in follow-up for chronic neck and low back pain radiating into the bilateral lower extremities. Dr. Barreto noted appellant's medical history was significant for C5-6 degenerative joint disease, foramina encroachment at C5-6, L5-S1, bulging disc, and mild degeneration at L5-S1. He noted that a March 23, 2018 MRI scan revealed central disc herniation at C5-6 and old compression fractures at T5-6. Dr. Barreto opined that the old compression fractures were related to appellant's fall at work and support appellant's complaints of pain and continued need for medication. He diagnosed chronic neck, thoracic, and low back pain due to herniated disc at L5-S1, compression fractures of the thoracic spine, degeneration of intervertebral disc at L5-S1 and C5, C6, and C7, and obesity. Dr. Barreto opined that appellant was unable to work full time due to the above-noted conditions.

By decision dated April 3, 2018, OWCP terminated appellant's wage-loss compensation and medical benefits effective April 29, 2018. It found that the opinion of Dr. Thrush established that he had no further residuals or disability due to his accepted employment injuries.

On April 9, 2018 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative which was held on August 7, 2018.

Subsequently, appellant submitted a May 18, 2018 report from Dr. Barreto who indicated that he was "perfectly healthy" (as per patient) until March 14, 2007 when he had an accident at

work. Dr. Barreto explained that he could not prove that appellant's lesions at C5-6 had not existed prior to the accident. He opined that he did not have any scientific evidence that would show a diagnosis made in 2018 was the result of old injuries from an accident -- but suggested to ask the opposite question of how do you prove the lesions were there previously. Dr. Barreto noted that he was not an orthopedist or neurophysiologist and could not explain the details of appellant's condition. He indicated that he had not treated appellant since August 2016 and suggested he be referred to an expert.

By decision dated October 17, 2018, OWCP's hearing representative affirmed the April 3, 2018 decision. He found that the opinion of Dr. Thrush constituted the weight of the evidence and established that appellant had no further disability or residuals of his accepted employment injuries.

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

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.<sup>5</sup> After it has determined that an employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.<sup>6</sup> Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>7</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.<sup>8</sup> To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.<sup>9</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 April 29, 2018.

On November 1, 2017 Dr. Thrush, an OWCP referral physician, found no objective evidence of lumbar strain and opined that the accepted conditions had resolved within three to six months of the date of injury. He indicated that appellant's current conditions and complaints relate to grade 1 degenerative disc disease at L5-S1. Dr. Thrush noted findings of degenerative arthritis and degenerative disc disease on the first MRI scan on April 20, 2007 and determined that the degenerative findings in the lumbar and cervical spine were age-related and preexisting conditions. He noted that appellant required no ongoing medical treatment related to the lumbar sprain diagnosis. Dr. Thrush found appellant to be totally disabled secondary to subjective pain which

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<sup>5</sup> *M.M.*, Docket No. 17-1264 (issued December 3, 2018).

<sup>6</sup> *E.B.*, Docket No. 18-1060 (issued November 1, 2018).

<sup>7</sup> *G.H.*, Docket No. 18-0414 (issued November 14, 2018).

<sup>8</sup> *L.W.*, Docket No. 18-1372 (issued February 27, 2019).

<sup>9</sup> *R.P.*, Docket No. 18-0900 (issued February 5, 2019).

was disproportionate to his objective findings. In an addendum report dated December 11, 2017, Dr. Thrush opined that appellant no longer remained totally disabled and in need of ongoing treatment directly related to the accepted work injuries of lumbar and cervical strain which had resolved within three to six months. Appellant's subjective symptoms were related to nonwork-related underlying early degenerative arthritis and degenerative disc disease. He provided a thorough review of the factual and medical background and accurately summarized the relevant medical evidence. Moreover, Dr. Thrush provided detailed findings on examination and reached conclusions regarding appellant's condition which comported with his findings.<sup>10</sup> Consequently, his opinion is entitled to the weight of the evidence and establishes that appellant had no further disability or need for medical treatment due to his March 14, 2017 employment injury effective April 29, 2018.<sup>11</sup>

The remaining evidence submitted prior to OWCP's termination of appellant's compensation is insufficient to establish that he had continuing disability or residuals of his accepted employment-related conditions. On August 29, 2017 Dr. Barreto noted that appellant was unable to return to work full time. Similarly, in a report dated March 26, 2018, he noted a March 23, 2018 MRI scan revealed central disc herniation at C5-6 and old compression fractures at T5-6. Dr. Barreto opined that the old compression fractures were related to appellant's fall at work. He diagnosed chronic neck, thoracic, and low back pain due to a herniated disc at L5-S1, compression fractures of the thoracic spine, degeneration of intervertebral discs at L5-S1 and C5, C6, C7, and obesity. Dr. Barreto opined that appellant was unable to work full time due to the above-noted conditions. However, he did not address the relevant issue of whether appellant was disabled from employment or required further medical treatment due to his accepted employment injuries, and thus his opinion is of little probative value.<sup>12</sup>

The Board finds that the weight of the evidence establishes that appellant had no further employment-related disability or need for medical treatment effective April 29, 2018, the date OWCP terminated his wage-loss compensation and medical benefits.<sup>13</sup>

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

Once OWCP properly terminates compensation benefits, the burden shifts to appellant to establish that he or she has continuing disability causally related to the accepted employment injury.<sup>14</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>15</sup>

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<sup>10</sup> *O.S.*, Docket No. 18-1549 (issued February 7, 2019).

<sup>11</sup> *O.W.*, Docket No. 17-1881 (issued May 1, 2018).

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

<sup>13</sup> *Id.*

<sup>14</sup> *D.M.*, Docket No. 17-1052 (issued January 24, 2019).

<sup>15</sup> *A.M.*, Docket No. 17-1192 (issued September 19, 2018).

## ANALYSIS -- ISSUE 2

The Board finds that appellant has not met his burden of proof to establish continuing employment-related disability or residuals on or after April 29, 2018.

Following the termination of his compensation, appellant submitted a May 18, 2018 report from Dr. Barreto who indicated that appellant was perfectly healthy (as per patient) until March 14, 2007 when he had an accident at work. Dr. Barreto noted that he could not show that a diagnosis made in 2018 was the result of old injuries during an accident. He further noted that he was not an orthopedist or neurophysiologist and could not explain the details of appellant's condition and had not treated appellant since August 2016. He suggested he be referred to an expert. As this evidence failed to address the relevant issue of appellant's disability or need for medical treatment due to his March 14, 2017 employment injury, it is of no probative value.<sup>16</sup>

The Board thus finds that appellant has not met his burden of proof to establish continuing residuals or disability on or after April 29, 2018.<sup>17</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 April 29, 2018. The Board further finds that he has not met his burden of proof to establish continuing employment-related disability or residuals on or after April 29, 2018 due to his accepted employment injuries

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<sup>16</sup> *L.B.*, Docket No. 18-0560 (issued August 20, 2018).

<sup>17</sup> *Supra* note 15.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 17, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 7, 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