

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

Y.I., Appellant)	
)	
and)	Docket No. 20-0263
)	Issued: November 30, 2020
U.S. POSTAL SERVICE, POST OFFICE,)	
Federal Way, WA, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On November 15, 2019 appellant filed a timely appeal from a July 24, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the July 24, 2019 decision, OWCP received additional evidence. 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.*

ISSUE

The issue is whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective July 24, 2019, as he no longer had residuals or disability causally related to his accepted April 10, 2016 employment injury.

FACTUAL HISTORY

On April 10, 2016 appellant, then a 53-year-old distribution clerk, filed a traumatic injury claim (Form CA-1) alleging that on that date he strained his middle and lower back when he lifted a sack of parcels while in the performance of duty. He stopped work. OWCP accepted appellant's claim for lumbar strain with left-sided sciatica. On May 14, 2016 appellant returned to part-time, modified-duty work for four hours per day. OWCP paid him wage-loss compensation on the supplemental rolls beginning May 28, 2016 for the remaining four hours per day.

On September 11, 2018 OWCP referred appellant, along with a statement of accepted facts (SOAF), a copy of the case record, and a series of questions, to Dr. Clarence Fossier, a Board-certified orthopedic surgeon, for a second opinion evaluation regarding the status of his employment-related conditions. In a December 6, 2018 report, Dr. Fossier reviewed appellant's history of injury and noted physical examination findings of normal gait and ability to walk on his toes and heels. He diagnosed lumbar strain with left-sided sciatica and reported that "being generous" appellant's lumbar strain would have resolved within three months. Dr. Fossier reported that appellant did not suffer residuals of his accepted April 10, 2018 employment injury and completed a work capacity evaluation form, which indicated that appellant could return to his regular job.

Appellant continued to seek medical treatment from Dr. Satish Subramaniam, a Board-certified preventive and family medicine physician, and submitted reports dated November 26, 2018 through May 21, 2019. Dr. Subramaniam noted that appellant continued to work a six-hour workday without any significant increase of symptoms. He reported lumbar examination findings of no tenderness or paraspinal spasm over the spine. Straight leg raise testing was negative bilaterally and range of motion was within normal limits. Dr. Subramaniam assessed lumbar strain. He recommended that appellant continue working a six-hour workday with restrictions and continue with medication and physical rehabilitation. Dr. Subramaniam completed a series of CA-17 forms indicating that appellant could work part-time, modified duty for six hours per day.

OWCP found that a conflict in medical evidence existed between Dr. Subramaniam, appellant's treating physician, and Dr. Fossier, an OWCP second opinion examiner, with regard to the status of appellant's accepted condition. As such, it referred appellant to Dr. Josef Eichinger, a Board-certified orthopedic surgeon, for an impartial medical examination to resolve the conflict of medical evidence. In a May 28, 2019 report, Dr. Eichinger indicated that he reviewed appellant's records and noted that appellant sustained a low back injury as a result of the April 10, 2016 employment injury. He recounted that lumbar spine diagnostic studies from 2016 revealed multilevel degenerative disc disease. Dr. Eichinger related appellant's complaints of low back pain and left hip ache and indicated that appellant was currently working six hours per day with restrictions. Upon examination of appellant's lumbar spine, he observed pain and no tenderness, swelling, edema, deformity, or spasm. Range of motion was normal and straight leg raise testing

was negative. Examination of appellant's lower extremities revealed 5/5 strength with hip flexion and extension, adduction and abduction, knee flexion and extension, ankle dorsiflexion and plantarflexion.

Dr. Eichinger indicated that appellant had no ongoing radicular symptoms beyond the end of September 2016 and that no further treatment was indicated in relation to the April 10, 2016 work injury. He indicated that any ongoing complaints beyond the end of September 2016 would be more-likely related to appellant's degenerative condition. Dr. Eichinger explained that these types of chronic degenerative changes occur over years and would not result from moving a mail sack. He also reported that appellant had no ongoing work restrictions due to the accepted April 10, 2016 employment injury.

On June 18, 2019 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits because his April 10, 2016 work-related injury had resolved. It found that the special weight of medical evidence rested with the May 28, 2019 medical report of Dr. Eichinger, OWCP's impartial medical examiner (IME), who found that appellant no longer had any residuals or disability causally related to his accepted April 10, 2016 employment injury. OWCP afforded appellant 30 days to submit additional evidence or argument, in writing, if he disagreed with the proposed termination.

In reports dated June 18 and July 16, 2019, Dr. Subramaniam indicated that appellant was seen for follow-up of low back strain with left-sided sciatica. He noted that appellant still had persistent complaints of low back pain and had been unable to increase his work activities beyond a six-hour workday with restrictions. Upon examination of the low back, Dr. Subramaniam observed no focal tenderness or paraspinal spasm. Straight leg raise testing was negative bilaterally. Dr. Subramaniam assessed lumbar strain with sciatica status post epidural steroid injections. He reported that appellant still continued to have residual difficulties with stooping, bending, and lifting and would be unable to fulfill the requirements of his on-the-job injury. Dr. Subramaniam also submitted CA-17 forms indicating that appellant could work part-time, modified-duty work for six hours per day.

In a July 11, 2019 statement, appellant noted his disagreement with the June 18, 2019 proposed termination letter, the opinions of the second opinion examiner, and the IME. He contended that he had not yet recovered from his April 10, 2016 employment injury. Appellant noted that he had been performing the same work for 11 years and argued that his diagnosed degenerative conditions were a result of his employment. He asserted that the April 10, 2016 employment injury, became "the trigger of the symptoms regardless of whether the degenerative changes exist or not." Appellant contended that he still needed medical benefits as he was in continuous pain due to his accepted April 10, 2016 work injury.

By decision dated July 24, 2019, OWCP finalized the termination of appellant's wage-loss compensation and medical benefits, effective that date. It found that the special weight of medical evidence rested with Dr. Eichinger, the IME, who had determined in a May 28, 2019 report that appellant did not have residuals or disability due to a work-related lumbar injury.

LEGAL PRECEDENT

According to FECA, once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of benefits.³ It may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.⁴ OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁶ To terminate authorization for medical treatment, OWCP must establish that the employee no longer has residuals of an employment-related condition, which require further medical treatment.⁷

Section 8123(a) of FECA provides that if there is a disagreement between the physician making the examination for the United States and the physician of an employee, the Secretary shall appoint a third physician (known as a referee physician or IME) who shall make an examination.⁸ This is called an impartial medical examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.⁹ When there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an IME for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well-rationalized and based upon a proper factual background, must be given special weight.¹⁰

ANALYSIS

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective July 24, 2019, as he no longer had residuals or disability causally related to his accepted April 10, 2016 employment injury.

OWCP properly determined that a conflict in medical opinion existed between Dr. Subramaniam, appellant's treating physician, who continued to opine that appellant still had residuals and work restrictions due to his April 10, 2016 employment injury, and Dr. Fossier,

³ *A.D.*, Docket No. 18-0497 (issued July 25, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁴ *A.G.*, Docket No. 18-0749 (issued November 7, 2018); *see also I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

⁵ *R.R.*, Docket No. 19-0173 (issued May 2, 2019); *T.P.*, 58 ECAB 524 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

⁶ *L.W.*, Docket No. 18-1372 (issued February 27, 2019); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁷ *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *A.P.*, Docket No. 08-1822 (issued August 5, 2009).

⁸ 5 U.S.C. § 8123(a); *see R.S.*, Docket No. 10-1704 (issued May 13, 2011); *S.T.*, Docket No. 08-1675 (issued May 4, 2009).

⁹ 20 C.F.R. § 10.321.

¹⁰ *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

OWCP's second opinion physician, who found that appellant no longer suffered residuals or work restrictions due to his April 10, 2016 employment injury. Appellant was referred to Dr. Eichinger for an impartial medical examination to resolve the conflict in medical evidence regarding whether he continued to have residuals or work restrictions causally related to the April 10, 2016 employment injury.

In a May 28, 2019 report, Dr. Eichinger noted appellant's history, reviewed the medical record, and noted examination findings. He indicated that lumbar spine diagnostic studies from 2016 revealed multilevel degenerative disc disease. Dr. Eichinger further noted that these types of chronic degenerative changes would not result from moving a mail sack but occur over years. He opined that appellant's accepted lumbar condition had resolved. Dr. Eichinger also reported that appellant had no ongoing work restrictions due to the accepted April 10, 2016 employment injury.

The Board finds that Dr. Eichinger's May 28, 2019 report, is entitled to the special weight of the medical opinion evidence and establishes that appellant no longer had residuals or disability due to his April 10, 2016 employment injury. Dr. Eichinger provided an accurate history of the April 10, 2016 employment injury, and reviewed his medical records. He performed a thorough, clinical examination and provided findings on examination. Dr. Eichinger noted that appellant's subjective complaints were due to his degenerative conditions and not as a result of the April 10, 2016 employment injury. He opined that appellant's accepted lumbar strain injury had resolved and that he no longer had work restrictions due to his accepted employment injury. The Board finds that Dr. Eichinger provided a well-rationalized opinion based on a complete factual background, statement of accepted facts, a review of the medical record and physical examination findings. Accordingly, Dr. Eichinger's medical opinion was sufficient for OWCP to justify the termination of appellant's wage-loss compensation and medical benefits, effective July 24, 2019, as he no longer had residuals or disability due to his accepted employment injury.¹¹

After receiving OWCP's notice of proposed termination, appellant submitted additional reports from Dr. Subramaniam. However, Dr. Subramaniam was on one side of the conflict, which Dr. Eichinger had resolved. The Board has held that reports from a physician who was on one side of a medical conflict are insufficient to overcome the special weight accorded to the IME, or to create a new conflict.¹²

The Board, therefore, finds that OWCP properly terminated appellant's wage-loss compensation and medical benefits, effective July 24, 2019.

On appeal appellant alleges that he required further medical treatment for his pain due to his injury. As discussed above, OWCP properly terminated his wage-loss compensation and medical benefits as the opinion of IME Dr. Eichinger constituted the special weight of the medical evidence.

¹¹ See *D.G.*, Docket No. 19-1259 (issued January 29, 2020); see also *D.T.*, Docket No. 10-2258 (issued August 1, 2011); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

¹² See *C.L.*, Docket No. 18-1379 (issued February 5, 2019); *I.J.*, 59 ECAB 408 (2008).

CONCLUSION

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective July 24, 2019, as he no longer had residuals or disability causally related to his accepted April 10, 2016 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the July 24, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 30, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board