

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

---

**D.D., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Chicago, IL, Employer**

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 20-0243  
Issued: May 28, 2021**

*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 12, 2019 appellant filed a timely appeal from a May 26, 2019 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 to consider the merits of this case.

**ISSUE**

The issue is whether OWCP has met its burden of proof to terminate appellant's entitlement to wage-loss compensation and medical benefits, effective May 26, 2019, as he no longer had residuals or disability causally related to his accepted January 28, 1977 employment injury.

---

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

## **FACTUAL HISTORY**

OWCP accepted that on January 28, 1977 appellant, then a 26-year-old part-time letter carrier,<sup>2</sup> sustained a lumbosacral sprain, mid-dorsal contusion chest, and permanent aggravation of preexisting thoracolumbar scoliosis when he tripped and fell on a sidewalk when carrying mail while in the performance of duty. He stopped work on January 31, 1977 and has not returned. OWCP paid appellant wage-loss compensation on the periodic rolls.

In an October 3, 2005 medical report, Dr. Carlton A. West, an attending Board-certified orthopedic surgeon, examined appellant. He reported tenderness along the right paraspinal muscles of the lumbar spine with prominent lateral curvature of the thoracolumbar spine. Dr. West advised that appellant had permanent deformity of the lower back. He opined that appellant remained totally disabled from heavy work. Dr. West concluded that he had a chronic and permanent condition and that no spontaneous improvement was expected.

By letters dated October 22, 2005 through January 14, 2016, OWCP periodically informed appellant the need for current medical evidence to establish his entitlement to continuing compensation benefits. It requested that he submit a current medical report from an attending physician addressing his employment-related residuals. OWCP also requested that the physician complete an accompanying work capacity evaluation (Form OWCP-5c), indicating whether appellant was able to return to work. Appellant was afforded 30 days to submit the requested information. No response was received.

On May 13, 2016 OWCP referred appellant, together with a statement of accepted facts (SOAF), the medical record, and a list of questions, to Dr. James L. Elmes, a Board-certified orthopedic surgeon, for a second opinion.

In a June 28, 2016 report, Dr. Elmes described the January 28, 1977 employment injury and noted that appellant's claim was accepted for lumbosacral strain, mid-dorsal contusion chest, and permanent aggravation of preexisting thoracolumbar scoliosis. He noted a review of appellant's medical records and related that they did not indicate that his significant scoliosis progressed as a result of the employment injury. Dr. Elmes advised that the work injury was not a direct cause, precipitation, or acceleration of the scoliosis. He related that appellant may have had temporary aggravation of his chronic back pain due to increased pain from the employment injury for three months. Dr. Elmes advised that appellant was unable to return to his date-of-injury job as a mail carrier due to deconditioning and the natural course of progression of his preexisting scoliosis, but he could perform sedentary-type job work with restrictions. Appellant's ongoing back pain was not a permanent aggravation or exacerbation, but was the expected normal course with this type of scoliosis. Additionally, Dr. Elmes noted that appellant's back pain did not correlate with an aggravation of his 30-year-old employment injury. On physical examination he found a normal heel and toe gait pattern. Dr. Elmes noted that appellant used a cane on the left. Appellant leaned slightly to the left when walking. He walked 150 feet with normal heel-to-toe motion and good balance without leaning when walking without the cane. Appellant leaned on a counter for support with toe standing and walking. He was able to heel walk a few steps. Appellant

---

<sup>2</sup> The Board notes that appellant's claim form is not contained in the case record. The record indicates that appellant worked part time due to preexisting low back pain.

leaned on the counter for support, but this was weaker than toe standing and walking. He was unable to hop secondary to low back pain. Appellant dressed and undressed himself unassisted. He got on and off the examination table unassisted. Appellant performed a one-half squat without pain. On motor examination Dr. Elmes found normal fine and gross motor coordination. Appellant could button, tie zip, write, and pick up a penny without difficulty. Grip strength on the right was 51, 53, 60, 52, 52, maximum being 60 pounds and on the left was 52, 60, 70, 65, 59, maximum being 70 pounds. Appellant walked 50 feet unassisted in Dr. Elmes' office and one block outdoors. Extremity strength of the bilateral upper extremities was 5/5, the right lower extremity was 5/5 the left lower extremity was 5-/5 with slight decrease because of pain. Regarding circumferential measurements, there was no measurable atrophy of the bilateral upper and lower extremities. On neurological examination Dr. Elmes found that appellant was alert and oriented throughout the evaluation. He answered all questions intelligently without hesitation. Vibratory sensation of the upper and lower extremities was bilaterally equal and normal. Sensation was to light touch and pinprick in the upper and lower extremities was bilaterally equal and normal. Deep tendon reflexes of the upper extremities was one-fourth bilaterally and of the lower extremities the patellar was one-fourth and there was Achilles trace. All ranges of motion (ROM) of the joints were normal except the right and left knees had no patellofemoral crepitus. They both had good stability without any effusion. Active knee flexion was 135 degrees on the right and 134 degrees on the left. The ROM of the shoulders was 170 degrees of active flexion, normal being 180 degrees. The remainder of ROM measurements were normal. There was some shoulder pain on the right with extreme range of flexion and abduction. A vascular examination revealed pulses that were bilaterally equal and regular. There was no abnormal pallor, cyanosis, pigmentation, or dermatitis of the skin. On examination of the back Dr. Elmes reported mild tenderness at LS-S1 and mildly at T12-L1 with some slight tenderness in the left sacroiliac area and superolateral gluteal region. With forward flexion, the right rib hump was prominent and with standing erect there was prominence to the left hip and iliac crest. Going up and down a single step was stronger on the right than the left. ROM of the back was within normal limits except for flexion to about 70 degrees with fingertips to 8 inches from the floor. Extension was 10 degrees, normal being 25 degrees, and lateral bending was 10 degrees, normal being 25 degrees. Leg length from the anterior superior iliac spine was 102 centimeters (cm) on the left and 101 cm on the right. A Waddell test with 0/5 tests was inappropriate as there was no symptom magnification.

Dr. Elmes diagnosed: lumbosacral strain that healed in eight weeks; mid dorsal chest contusion that healed in eight weeks; aggravation of preexisting scoliosis that healed in three months; and generalized deconditioning. He advised that these conditions were work related. Dr. Elmes opined that the generalized deconditioning was work related since appellant was unable to exercise or work due to increased low back pain. He recommended, among other things, a written home therapeutic exercise program to strengthen his lower extremities and spinal supportive muscles. Dr. Elmes related that he should have started a therapeutic exercise program three months after the date of injury. He also diagnosed right dorsal hand lump noted in a previous 1979 medical evaluation. Additionally, Dr. Elmes diagnosed high blood pressure that was not work related. He determined that appellant reached maximum medical improvement three months status post his January 28, 1977 employment injury. Dr. Elmes reiterated that he could not perform his date-of-injury position, but he could perform sedentary work with restrictions. He concluded

that appellant's work-related conditions had resolved. Dr. Elmes again noted that he had pain due to the natural progression of scoliosis over the past 30 years with associated chronic strain.<sup>3</sup>

By notice dated April 19, 2019, OWCP advised appellant that it proposed to terminate his entitlement to wage-loss compensation and medical benefits based on Dr. Elmes' opinion that the January 28, 1977 accepted conditions had ceased without residuals or disability. It afforded him 30 days to submit additional evidence or argument challenging the proposed termination. No response was received.

OWCP, by decision dated May 22, 2019, terminated appellant's wage-loss compensation and medical benefits, effective May 22, 2019, based on Dr. Elmes' second opinion. It noted that appellant had not submitted any additional medical evidence as requested.

In an amended notice of even date, OWCP modified the effective date of the termination to May 26, 2019.

### **LEGAL PRECEDENT**

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> 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>5</sup> Its 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.<sup>7</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>8</sup>

---

<sup>3</sup> OWCP, by decision dated February 22, 2017, suspended appellant's wage-loss compensation, effective February 5, 2017, for failing to complete a financial disclosure statement (Form CA-1032) as requested. It advised that, if appellant were to complete and return the form, his compensation benefits would be restored retroactively to the date they were suspended. On March 24, 2017 OWCP received his completed Form CA-1032 dated March 3, 2017. It reinstated appellant's compensation benefits and placed him back on the periodic rolls.

<sup>4</sup> See *D.G.*, Docket No. 19-1259 (issued January 29, 2020); *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>5</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>6</sup> *K.W.*, Docket No. 19-1224 (issued November 15, 2019); see *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

<sup>7</sup> *J.W.*, Docket No. 19-1014 (issued October 24, 2019); *L.W.*, Docket No. 18-1372 (issued February 27, 2019).

<sup>8</sup> *L.S.*, Docket No. 19-0959 (issued September 24, 2019); *R.P.*, Docket No. 18-0900 (issued February 5, 2019).

## ANALYSIS

The Board finds that OWCP has met its burden of proof to terminate appellant's entitlement to wage-loss compensation and medical benefits, effective May 26, 2019, as he no longer had residuals or disability causally related to his accepted January 28, 1977 employment injury.

OWCP referred appellant to Dr. Elmes for a second opinion evaluation to determine the status of his accepted conditions and work capacity. In his June 28, 2016 report, Dr. Elmes described his January 28, 1977 employment injury and noted that his claim was accepted for lumbosacral strain, mid-dorsal contusion chest, and permanent aggravation of preexisting thoracolumbar scoliosis. He reported that findings on examination were essentially normal. Dr. Elmes opined that the accepted work-related conditions had resolved, that appellant could return to sedentary work with restrictions, and that there was no need for further medical treatment for the accepted conditions. He opined that the employment-related injury caused a temporary rather than permanent aggravation of appellant's preexisting scoliosis and that his current pain was due to the natural progression of his condition over the past 30 years. Dr. Elmes explained that he required a home exercise program for his scoliosis condition because he never received such treatment which should have begun three months after the date of his injury.

The Board finds that OWCP properly accorded the weight of the medical evidence to Dr. Elmes. Dr. Elmes based his opinion on a proper factual and medical history and physical examination findings and provided medical rationale for his opinion. He provided a well-rationalized opinion based on medical evidence regarding the accepted conditions causally related to appellant's January 28, 1977 employment injury. Accordingly, OWCP properly relied on Dr. Elmes' second opinion report in terminating his entitlement to wage-loss compensation and medical benefits.<sup>9</sup>

On appeal appellant contends that his accepted January 28, 1977 employment-related injury exacerbated his preexisting scoliosis of the spine and resulted in his total disability from work. As explained above, OWCP properly terminated his wage-loss compensation and medical benefits as the opinion of Dr. Elmes, the second opinion physician, constituted the weight of the medical evidence.

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 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 entitlement to wage-loss compensation and medical benefits, effective May 26, 2019, as he no

---

<sup>9</sup> See *E.S.*, Docket No. 20-0673 (issued January 11, 2021); *K.W.*, *supra* note 6; *N.G.*, Docket No. 18-1340 (issued March 6, 2019); *A.F.*, Docket No. 16-0393 (issued June 24, 2016).

longer had residuals or disability causally related to his accepted January 28, 1977 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 22, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 28, 2021  
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