

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

R.G., Appellant)	
)	
and)	Docket No. 22-0165
)	Issued: August 11, 2022
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Kearny, NJ,)	
Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On November 8, 2021 appellant filed a timely appeal from September 13 and October 19, 2021 merit decisions 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.

ISSUES

The issues are: (1) whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective September 13, 2021, as he no longer had disability or residuals causally related to his accepted February 8, 2004 employment injury; and (2) whether appellant has met his burden of proof to establish continuing disability or residuals on or after September 13, 2021 causally related to his accepted February 8, 2004 employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 8, 2004 appellant, then a 34-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on that date he sustained a right-sided lower back injury when he used a manual jack to remove boxes from a small parcel and bundle sorter while in the performance of duty. He did not stop work, but he began working in a limited-duty position as a full-time modified mail handler. OWCP accepted appellant's claim for lumbosacral sprain/strain. Appellant intermittently stopped work thereafter and OWCP paid him wage-loss compensation for disability from work on the supplemental rolls commencing March 25, 2004 and on the periodic rolls commencing June 13, 2004.

Commencing in early-2004, appellant came under the care of Dr. Juluru P. Rao, a Board-certified orthopedic surgeon. In a March 9, 2004 report, he indicated that appellant complained of lower back pain, which radiated into both buttocks and noted that recent x-rays showed asymmetry at L5 with apparent pars defect, but no fractures or dislocations. Dr. Rao diagnosed lumbosacral sprain rule out herniated lumbar disc.

On August 5, 24, and September 20, 2005 Dr. Duen Shih, a Board-certified orthopedic surgeon, carried out epidural steroid injections to treat appellant's diagnosed conditions of herniated lumbar disc at L5-S1 and lumbar facet syndrome.

A report of a June 15, 2006 magnetic resonance imaging (MRI) scan of appellant's lumbosacral spine revealed loss of signal and disc height at L4-5 consistent with desiccation, and contained an impression of central disc herniation at L4-5.

Appellant continued to receive periodic care for his back condition from Dr. Rao. In a January 6, 2020 report, he indicated when he examined appellant on October 18, 2019 he was in severe distress and complained of back pain with radiation into the right lower extremity. The physical examination at that time revealed tenderness from L4 through S1 and painful range of lumbar spine motion. Dr. Rao diagnosed herniated nucleus pulposus at L4-5 and L5-S1 and noted, "[t]he patient's condition is a direct result of the accident he sustained on February 8, 2014. In my opinion, the patient is totally disabled and will benefit from surgical intervention. It is also my opinion that if the herniated discs are treated with surgical intervention he may return back to work."

In a January 7, 2020 attending physician's report (Form CA-20), Dr. Rao indicated that appellant injured his back on February 8, 2004 when he used a hand jack to remove mail. He diagnosed herniated nuclei pulposus at L4-5 and L5-S1 due to the reported employment activity and indicated that appellant was totally disabled from February 8, 2004 to "lifetime."

On April 2, 2021 OWCP referred appellant, along with a statement of accepted facts (SOAF) and a series of questions, for a second opinion examination and evaluation with Dr. Frank Corrigan, a Board-certified orthopedic surgeon. It requested that Dr. Corrigan provided an opinion regarding whether appellant had continuing disability or residuals of his February 8, 2004 employment injury, *i.e.*, lumbosacral sprain/strain.

In an April 29, 2021 report, Dr. Corrigan discussed appellant's factual and medical history and reported the findings of the physical examination he conducted on that date. He noted that appellant was observed ambulating normally in the examination room and that examination of the thoracolumbar spine demonstrated no tenderness to palpation. There was no pain on range of motion testing of the back and sensation was intact to light and coarse touch in the bilateral lower extremities. Dr. Corrigan indicated that Babinski testing was negative bilaterally and that straight leg raising was negative bilaterally, but limited to 10 degrees due to back pain. Appellant was able to heel rise bilaterally, but unable to toe rise bilaterally. Dr. Corrigan concluded that appellant had fully recovered from the February 8, 2004 employment injury and had no residuals of the accepted lumbosacral sprain. He noted that the disc pathology seen on appellant's diagnostic testing was exceedingly prevalent in his generational population. Dr. Corrigan indicated, "Based upon review of the medical records provided, history and today's physical examination, it is my opinion from an orthopedic standpoint that [appellant] has completely recovered from the incident on February 8, 2004.... I feel no further treatment is necessary." He opined that appellant continued to suffer from symptoms not related to the February 8, 2004 soft-tissue injury of sprain in that he suffered from degenerative spine and disc pathology that was unrelated to the February 8, 2004 injury. Dr. Corrigan noted that appellant could continue to participate in all his current activities of daily living, but from a work standpoint, given his physical examination findings, he would be best suited for light-duty capacity work and could not perform his date-of-injury job. In an April 29, 2021 work capacity evaluation (Form OWCP-5c), he advised that appellant could work on a full-time basis with restrictions of lifting/pushing/pulling no more than 20 pounds.

OWCP requested that Dr. Corrigan provide a supplemental report clarifying the cause of appellant's need for work restrictions. In a June 24, 2021 supplemental report, he indicated that the work restrictions he provided on April 29, 2021 were necessitated by appellant's chronic and degenerative pathology in the more than 17 years since the incident on February 8, 2004, and were not necessitated by the accepted condition of lumbosacral sprain. Dr. Corrigan again indicated that appellant could continue to participate in all his current activities of daily living, but from a work standpoint, given his physical examination findings on April 29, 2021, he would be best suited for a light-duty capacity. He also repeated his belief that appellant could not return to his date-of-injury job.

In a July 23, 2021 notice, OWCP advised appellant that it proposed to terminate his wage-loss compensation and medical benefits because he no longer had disability or residuals causally related to his accepted February 8, 2004 employment injury. It found that the weight of the medical opinion evidence regarding work-related disability and residuals rested with the well-rationalized opinion of Dr. Corrigan, OWCP's referral physician. OWCP afforded appellant 30 days to submit additional evidence or argument challenging the proposed termination action.

Appellant submitted an August 21, 2021 report from Dr. Rao who noted that, during an August 3, 2021 physical examination, he exhibited tenderness from L3 through S1 and bilateral sciatic notch tenderness. Straight leg raising was positive in both lower extremities and severe paravertebral muscle spasms were noted. Dr. Rao indicated that range of motion of appellant's back was severely restricted and painful. Atrophy of the right quadriceps muscle was noted, and it was observed that appellant had difficulty standing on his toes and heels. Dr. Rao described appellant's medication regimen and noted that he was unable to lift, push, or pull, and had some

difficulty with prolonged standing and sitting. He diagnosed herniated nucleus pulposus at L4-5 and L5-S1 and indicated:

“As previously stated, the patient’s condition is a direct result of the accident on February 8, 2004. In my opinion the patient is totally disabled and would benefit from surgical intervention. It is also my opinion that if the herniated discs are treated with surgical intervention, he would be able to return back to work.”

By decision dated September 13, 2021, OWCP finalized the notice of proposed termination of appellant’s wage-loss compensation and medical benefits, effective that date, as he no longer had disability or residuals causally related to his accepted February 8, 2004 employment injury. It based its decision on the opinion of Dr. Corrigan.

On September 28, 2021 appellant requested reconsideration and resubmitted a copy of Dr. Rao’s August 21, 2021 report.

By decision dated October 19, 2021, OWCP denied modification of its September 13, 2021 decision. It found that the termination action was proper, and that appellant thereafter failed to submit sufficient medical evidence to establish that he had continuing disability and residuals on or after September 13, 2021 causally related to the accepted February 8, 2004 employment injury.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of an employee’s benefits.² 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.³ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁵ 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.⁶

² *D.G.*, Docket No. 19-1259 (issued January 29, 2020); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

³ *See R.P.*, Docket No. 17-1133 (issued January 18, 2018); *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

⁴ *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁵ *A.G.*, Docket No. 19-0220 (issued August 1, 2019); *A.P.*, Docket No. 08-1822 (issued August 5, 2009); *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005). *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁶ *See A.G., id.*; *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002).

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 September 13, 2021, as he no longer had disability or residuals causally related to his accepted February 8, 2004 employment injury.

The Board finds that the weight of the medical opinion evidence regarding work-related disability and residuals is represented by the thorough, well-rationalized opinion of Dr. Corrigan, OWCP's referral physician. The April 29 and June 24, 2021 reports of Dr. Corrigan establish that appellant no longer had disability or residuals as of September 13, 2021 causally related to his February 8, 2004 employment injury.

In his April 29, 2021 narrative report, Dr. Corrigan discussed appellant's factual and medical history, and reported the findings of the physical examination he conducted on that date. He concluded that appellant had fully recovered from the February 8, 2004 employment injury and had no residuals of the accepted lumbosacral sprain. Dr. Corrigan noted that the disc pathology seen on appellant's diagnostic testing was exceedingly prevalent in his generational population. He explained, "[b]ased upon review of the medical records provided, history, and today's physical examination, it is my opinion from an orthopedic standpoint that [appellant] has completely recovered from the incident on February 8, 2004.... I feel no further treatment is necessary." Dr. Corrigan opined that appellant continued to suffer from symptoms not related to the February 8, 2004 soft tissue injury of sprain, but rather suffered from degenerative spine and disc pathology that was unrelated to the February 8, 2004 injury. He noted that appellant could continue to participate in all his current activities of daily living, but from a work standpoint, given his physical examination findings, he would be best suited for light-duty capacity work and could not perform his date-of-injury job. In an April 29, 2021 work capacity evaluation, he advised that appellant could work on a full-time basis with restrictions of lifting/pushing/pulling no more than 20 pounds. In a June 24, 2021 supplemental report, he clarified that the work restrictions he provided on April 29, 2021 were necessitated by appellant's chronic and degenerative pathology in the more than 17 years since the incident on February 8, 2004, and were not necessitated by the accepted condition of lumbosacral sprain.

The Board has reviewed the opinion of Dr. Corrigan and finds that it has reliability, probative value, and convincing quality with respect to its conclusions regarding the relevant issue of work-related disability/residuals. Dr. Corrigan provided a thorough factual and medical history and accurately summarized the relevant medical evidence. He provided medical rationale for his opinion by explaining that appellant did not exhibit objective evidence of the soft-tissue injury he sustained in 2004. Dr. Corrigan also explained that appellant's continuing back problems were due to nonwork-related factors, included age-related progression of degenerative disc disease.⁷

Appellant submitted an August 21, 2021 report from Dr. Rao who noted that, during an August 3, 2021 physical examination, he exhibited tenderness from L3 through S1 and bilateral

⁷ See *W.C.*, Docket No. 18-1386 (issued January 22, 2019); *D.W.*, Docket No. 18-0123 (issued October 4, 2018); *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).

sciatic notch tenderness. Dr. Rao reported other findings of the examination, including bilateral positive straight leg raising and severe paravertebral muscle spasms. He noted that appellant had some difficulty with prolonged standing and sitting. Dr. Rao diagnosed herniated nucleus pulposus at L4-5 and L5-S1 and indicated:

“As previously stated, the patient’s condition is a direct result of the accident on February 8, 2004. In my opinion, the patient is totally disabled and would benefit from surgical intervention. It is also my opinion that, if the herniated discs are treated with surgical intervention, he would be able to return back to work.”

However, Dr. Rao’s report failed to provide adequate medical rationale in support of his opinion on causal relationship. OWCP has only accepted that appellant sustained a lumbosacral sprain/strain on February 8, 2004 and Dr. Rao’s August 21, 2021 report does not otherwise demonstrate that he sustained a more severe back injury. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how an employment activity could have caused or aggravated a medical condition.⁸ Therefore, this report is insufficient to show that OWCP improperly terminated appellant’s compensation.

As the evidence of record is insufficient to overcome the weight accorded to Dr. Corrigan, or to create a conflict in medical opinion, the Board finds that OWCP has met its burden of proof.

LEGAL PRECEDENT -- ISSUE 2

When OWCP properly terminates compensation benefits, the burden shifts to appellant to establish continuing disability or residuals after that date, causally related to the accepted employment injury.⁹ To establish causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background, supporting such causal relationship.¹⁰

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met his burden of proof to establish continuing disability or residuals on or after September 13, 2021 causally related to his accepted February 8, 2004 employment injury.

After OWCP’s September 13, 2021 decision terminating appellant’s compensation effective that date, appellant requested reconsideration and resubmitted a copy of the August 21, 2021 report from Dr. Rao. However, as explained above, this report is of limited probative value regarding continuing work-related disability or residuals because Dr. Rao failed to provide

⁸ See *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

⁹ See *S.M.*, Docket No. 18-0673 (issued January 25, 2019); *C.S.*, Docket No. 18-0952 (issued October 23, 2018); *Manuel Gill*, 52 ECAB 282 (2001).

¹⁰ *Id.*

adequate medical rationale in support of his opinion on causal relationship.¹¹ Accordingly, the Board finds that the resubmission of this report would not meet appellant's burden of proof.

CONCLUSION

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective September 13, 2021, as he no longer had disability or residuals causally related to his accepted February 8, 2004 employment injury. The Board further finds that appellant has not met his burden of proof to establish continuing disability or residuals on or after September 13, 2021 causally related to his accepted February 8, 2004 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the September 13 and October 19, 2021 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 11, 2022
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board

¹¹ See *supra* note 8.