

Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.³

ISSUE

The issue is whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective April 27, 2021, as he no longer had residuals or disability causally related to his accepted April 21, 1988 employment injuries.

FACTUAL HISTORY

On April 29, 1988 appellant, then a 36-year-old machinist, filed a traumatic injury claim (Form CA-1) alleging that on April 21, 1988 he injured his lower back moving a large vise while in the performance of duty.⁴ He stopped work on April 21, 1988. On July 14, 1988 OWCP accepted the claim for lumbosacral sprain. On November 16, 1988 it expanded the acceptance of the claim to include aggravation of herniated disc. OWCP paid appellant wage-loss compensation on the supplemental rolls beginning June 7, 1988. Appellant returned to modified light-duty work six hours a day on April 28, 1989 and OWCP accepted that he sustained a recurrence of disability on September 6, 1989. He returned to light-duty work for four hours per day on October 6, 1989. Appellant stopped work completely on April 3, 1990 and OWCP paid him wage-loss compensation on the periodic rolls for total disability beginning July 11, 1990.

Appellant provided a series of reports from Dr. Nishi Sahay, a Board-certified internist, dated February 3, 2009 through December 15, 2017, recounting his symptoms of severe back pain radiating into his legs. Dr. Sahay noted that appellant had worked as a machinist and had an injury at work on that date. She found that he was unable to sit or stand for long periods of time and could not squat, bend, reach, and stoop. Dr. Sahay opined that appellant was unable to hold a job due to severe pain and was permanently disabled. She diagnosed radicular pain in both lower extremities, severe back pain, herniated discs, and foraminal stenosis. Dr. Sahay recounted that appellant had undergone a lumbar spine magnetic resonance imaging (MRI) scan which demonstrated moderate-to-severe multilevel degenerative disc disease, disc protrusions, and facet changes with varying degrees of central stenosis and neural foraminal narrowing. Appellant also underwent electrodiagnostic studies, which demonstrated lower extremity neuropathy, possibly related to diabetes.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the October 27, 2021 decision, appellant submitted additional evidence to OWCP. 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.*

⁴ OWCP assigned the present claim OWCP File No. xxxxxx984. Appellant also has a prior claim under OWCP File No. xxxxxx439 accepted for an April 5, 1979 lumbosacral strain, and a prior claim under OWCP File No. xxxxxx843, accepted for lumbosacral strain with sciatic irritation. OWCP File Nos. xxxxxx439, xxxxxx843, and xxxxxx984, had been administratively combined, with the latter serving as the master file.

In a letter dated July 10, 2019, OWCP requested that appellant provide additional medical evidence supporting his continued work-related disability.

On December 5, 2019 OWCP referred appellant, along with a statement of accepted facts (SOAF), and a series of questions for a second opinion examination and evaluation to Dr. John Bannon, a Board-certified orthopedic surgeon. It requested that he provide an opinion regarding whether appellant continued to have disability or residuals causally related to his April 21, 1988 employment injury.

In a December 30, 2019 report, Dr. Bannon reviewed the SOAF and medical record. He recounted appellant's symptoms of low back pain with painful paresthesias down his right lower extremity. Dr. Bannon performed a physical examination and found an antalgic gait from the right lower extremity, the inability to toe walk on the right due to weakness, and the inability to heel walk due to lack of dorsiflexion in the right ankle. He found tenderness in the midline of the lower lumbar spine and limited range of motion with only 20 degrees of forward flexion of the spine with almost no extension, lateral bending, or rotation. Dr. Bannon reported no tenderness in the lumbar paraspinal muscles and no spasm. He noted that appellant exhibited considerable weakness of the dorsi and plantar flexion in the right ankle and toes, but no accompanying calf atrophy. Dr. Bannon diagnosed lumbar spinal stenosis, a chronic degenerative condition of the low back, and opined that this condition was not employment related. He noted that lumbar spinal stenosis was a chronic gradual degenerative condition of the lumbar spine, did not occur with the lifting incident, and that the April 21, 1988 lifting accident did not go on to cause all of the radiologic abnormalities manifested 30 years later. Dr. Bannon noted that appellant had been experiencing disabling subjective residuals of the April 21, 1988 injury including chronic low back pain and chronic right lower extremity pain with extreme weakness of the right ankle and foot, but that these residuals were not supported by objective findings. He concluded that appellant had recovered from his accepted conditions of lumbosacral sprain and aggravation of herniated disc. Dr. Bannon recommended a functional capacity evaluation (FCE) to determine appellant's work abilities.

On February 5, 2020 appellant underwent an FCE, which demonstrated that he was capable of working 40 hours a week in a sedentary capacity.

In a June 25, 2020 development letter, OWCP requested that appellant provide additional medical evidence to support that the diagnosed condition of lumbar spinal stenosis found by Dr. Sahay on December 15, 2017 was causally related to the accepted April 21, 1988 employment injury. It afforded appellant 30 days to respond. No response was received.

By decision dated September 29, 2020, OWCP denied expansion of the claim to include the additional diagnosis of lumbar spinal stenosis.

On October 14, 2020 OWCP requested a supplemental report from Dr. Bannon addressing whether appellant was experiencing disabling residuals causally related to his accepted April 21, 1988 employment injury. In a December 14, 2020 response, Dr. Bannon opined that appellant had recovered from the April 21, 1988 employment injuries of lumbosacral sprain and aggravation of herniated disc. He again noted that he had developed the additional condition of spinal stenosis syndrome, a degenerative condition of the low back, as well as multi-level degenerative disc disease, and opined that these were chronic gradual degenerative conditions of the lumbar spine

and not causally related to the April 21, 1988 employment injury. Dr. Bannon concluded that appellant's current disability was due to a nonwork-related condition.

In a March 16, 2021 notice, OWCP advised appellant that it proposed to terminate his wage-loss compensation and medical benefits. It indicated that the weight of the medical opinion evidence rested with the well-rationalized opinion of Dr. Bannon, OWCP's referral physician, who found that appellant no longer had residuals or disability causally related to the accepted employment injury. OWCP afforded him 30 days to submit argument and evidence challenging the proposed termination action.

In an April 13, 2021 statement, counsel contended that there was an unresolved conflict between the opinions of treating physician, Dr. Sahay, and second opinion physician, Dr. Bannon, regarding causal relationship between the additional diagnosed condition of lumbar spinal stenosis and the accepted April 21, 1988 employment injury, which rendered the proposed termination of wage-loss compensation and medical benefits premature.

By decision dated April 26, 2021, OWCP terminated appellant's wage-loss compensation and medical benefits, effective April 27, 2021. It found that Dr. Bannon's opinion constituted the weight of the medical opinion evidence that appellant no longer had any disability or residuals causally related to the accepted April 21, 1988 employment injury.

In a letter dated May 6, 2021, appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. A telephonic hearing was held on August 21, 2021.

By decision dated October 27, 2021, OWCP's hearing representative affirmed the April 26, 2021 termination decision.

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.⁵ 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.⁶ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁷

⁵ *J.C.*, Docket No. 22-0033 (issued June 8, 2022); *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).

⁶ *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).

⁷ *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁸ 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.⁹

ANALYSIS

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective April 27, 2021, as he no longer had residuals or disability causally related to his accepted April 21, 1988 employment injuries.

In his December 30, 2019 and December 14, 2020 reports, Dr. Bannon discussed appellant's factual and medical history and reported the findings of his physical examination. He noted that appellant presented with subjective symptoms which were not supported by objective findings. Dr. Bannon recounted appellant's symptoms of chronic low back pain and chronic right lower extremity pain with extreme weakness of the right ankle and foot, but no accompanying calf atrophy. He diagnosed appellant's currently disabling condition as lumbar spinal stenosis and multi-level degenerative disc disease, which were chronic gradual degenerative conditions of the lumbar spine and not causally related to the April 21, 1988 lifting incident. Dr. Bannon found that appellant had recovered from his accepted conditions of lumbosacral sprain and aggravation of herniated disc. He explained that appellant's current presentation did not manifest any residue of the accepted conditions. Dr. Bannon indicated that the accepted conditions had sufficiently healed for appellant to return to full duty on a full-time basis, but he noted that appellant had developed nonemployment-related lumbar spinal stenosis and degenerative disc disease which rendered him partially disabled.¹⁰

The Board has reviewed the opinion of Dr. Bannon and finds that it has reliability, probative value, and convincing quality with respect to its conclusions regarding the relevant issue of continuing work-related residuals and disability. Dr. Bannon 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 findings of the accepted conditions of lumbosacral sprain and aggravation of herniated disc he sustained on April 21, 1988.¹¹ The weight of the medical evidence is therefore represented by the thorough, well-rationalized opinion of Dr. Bannon, OWCP's referral physician.

⁸ *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).

⁹ *See A.G., id.*; *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002).

¹⁰ *See J.C., supra* note 6.

¹¹ *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).

The Board thus finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective April 27, 2021.

CONCLUSION

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective April 27, 2021, as he no longer had residuals or disability causally related to his accepted April 21, 1988 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the October 27, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 28, 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