

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

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G.N., Appellant)	
)	
and)	Docket No. 23-0763
)	Issued: February 21, 2024
DEPARTMENT OF HOMELAND SECURITY,)	
TRANSPORTATION SECURITY)	
ADMINISTRATION, JOHN F. KENNEDY)	
INTERNATIONAL AIRPORT, Jamaica, NY,)	
Employer)	
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Appearances: *Case Submitted on the Record*
Thomas S. Harkins, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On May 3, 2023 appellant, through counsel, filed a timely appeal from a November 16, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

ISSUES

The issues are: (1) whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective July 7, 2022, as he no longer had disability or residuals causally related to his accepted April 9, 2014 employment injury; and (2) whether appellant has met his burden of proof to establish continuing employment-related disability or residuals, on or after July 7, 2022, causally related to his accepted April 9, 2014 employment injury.

FACTUAL HISTORY

On April 12, 2014 appellant, then a 31-year-old transportation security officer, filed a traumatic injury claim (Form CA-1) alleging that on April 9, 2014 he sustained an injury when he was a passenger in a parked vehicle that was rear ended by another vehicle, while in the performance of duty. He did not immediately stop work. By decision dated May 28, 2014, OWCP accepted the claim for contusion of back, neck sprain, and lumbar sprain.

On June 5, 2014 appellant underwent a magnetic resonance imaging (MRI) scan of the cervical spine. The study revealed findings of multilevel loss of disc signal and contained an impression of straightening of lordosis with multilevel degenerative disc disease, and central disc herniation and annular tear at C4-5 with no mass effect on the cord. A June 9, 2014 lumbar spine MRI scan noted findings of degenerative disc disease at L5-S1 and central disc herniation with no stenosis, and facet hypertrophy at L1-2 through L4-5 with no herniation or stenosis. It contained an impression of degenerative disc disease at L5-S1 and central disc herniation with no stenosis.

Appellant continued treatment for his cervical and lumbar injuries. He stopped work for a period of eight months in 2017 and stopped work completely in May 2021.

On February 2, 2022 OWCP referred appellant, the medical record, a statement of accepted facts (SOAF), and a series of questions to Dr. Leon Sultan, a Board-certified orthopedic surgeon, for a second opinion evaluation and determination regarding whether he had any disability or residuals causally related to the accepted April 9, 2014 employment injury.

On February 28, 2022 Dr. Sultan evaluated appellant for the purpose of the second opinion evaluation. In his report, he documented appellant's physical examination findings, discussed his history of injury, and summarized his various diagnostic studies. On examination of the cervical spine, Dr. Sultan noted normal range of motion (ROM), well-preserved cervical curvature, no trigger points on palpation over the trapezius musculature, intact sensory testing, strong bilateral grip strength, firm pinch mechanism, and a negative axial compression test. He further reported that biceps, triceps, and radial reflexes were "symmetrically dull." Dr. Sultan discussed his thoracolumbar examination findings, which included a normally aligned spinal column, non-tilted pelvis, maintained lordotic curvature, no active parathoracic or paralumbar muscle spasm with palpation, non-tender sacroiliac joints, and normal ROM testing of the thoracolumbar spine. He reported that his orthopedic evaluation of the cervical and thoracolumbar spine revealed stable findings that were neurologically intact, noting that appellant's subjective complaints of generalized pain did not correspond with the objective examination findings. Dr. Sultan further noted that appellant had undergone multiple MRI scans of the cervical and lumbar spine, which

did not correspond to the objective findings from his examination. He reported that appellant's post-traumatic cervicalgia and lumbalgia had resolved, and found that he had reached maximum medical improvement (MMI) and no longer suffered from disability or residuals as a result of the April 9, 2014 employment injury. Dr. Sultan concluded that, from an orthopedic standpoint, appellant could return to his date-of-injury job without restrictions due to minimal findings on examination.

By notice dated April 5, 2022, OWCP advised appellant of its proposed termination of his wage-loss compensation and medical benefits as the weight of the medical evidence established that he no longer had any disability or residuals causally related to his accepted April 9, 2014 employment injury. It afforded him 30 days to submit additional evidence or argument if he disagreed with the proposed termination.

On May 7, 2022 appellant responded to the notice of proposed termination. He argued that his conditions had not fully healed. He further reported that he had updated MRI scans performed since the notice of proposed termination, which he would be providing with his physician's report to substantiate his claim and current restrictions.

In support of his claim, appellant submitted medical reports dated April 21 through May 31, 2022, documenting his ongoing treatment with Dr. Richard L. Parker, a Board-certified orthopedic surgeon. In an April 21, 2022 note, Dr. Parker reported that appellant presented for follow-up of neck and back pain. He provided examination findings and diagnosed cervicalgia and right-sided lumbago/sciatica. Dr. Parker reported that appellant was totally disabled and unable to work.

An April 26, 2022 lumbar spine MRI scan showed an impression of convex left curvature with straightening of the lordosis; facet arthrosis at L1-2, L2-3, L3-4, L4-5, and L5-S1 loss of disc signal and height, bulge, facet arthrosis and ligamentum flavum hypertrophy with right facet effusion, and central herniation and epidural lipomatosis with moderate central stenosis.

On April 29, 2022 appellant underwent a cervical spine MRI scan, which diagnosed an impression of C4-5 posterior disc herniation with a broad base with borderline central spinal stenosis; C5-6 posterior disc herniation with a broad base resulting in borderline central spinal stenosis; C6-7 posterior disc bulge, C3-4 diffuse posterior disc bulge, cervical kyphosis with the apex at C4-5 with evidence for muscular spasm, probable atypical hemangioma involving the T2 vertebral body central to posteriorly; and approximately 2 mm inferior cerebellar tonsillar ectopia and partial visualization of what may be a retrocerebellar arachnoid cyst.

In a May 4, 2022 note, Dr. Parker noted that an MRI scan of the cervical spine revealed herniated nucleus pulposus (HNP) at C4-5 and C5-6 and an MRI scan of the lumbar spine revealed HNP at L5-S1. He diagnosed HNP of high cervical region, HNP of mid cervical region, and other intervertebral disc displacement of lumbosacral region.

In a May 25, 2022 note, Dr. Parker reported that the April 26, 2022 MRI scan of the lumbar spine revealed L5-S1 central herniation and epidural lipomatosis with moderate central stenosis. He further reported that the April 29, 2022 MRI scan of the cervical spine revealed a posterior disc bulge impressing on the ventral thecal sac and probable atypical hemangioma involving the T2

vertebral body central to posteriorly. Dr. Parker diagnosed other intervertebral disc displacement, HNP cervicothoracic region, radiculopathy cervical region, and lumbar radiculopathy. He administered intra-articular injections to the lumbar and cervical spine.

In a May 31, 2022 note, Dr. Parker provided examination findings and diagnosed HNP of high cervical region, HNP of the mid cervical region, and other intervertebral disc displacement of lumbosacral region. He recommended ROM exercises, an ultrasound, electrical stimulation, massage therapy, and physical therapy. Dr. Parker further reported that appellant sustained 30 percent permanent impairment.

In a May 31, 2022 return to work note, Dr. Parker reported that appellant could return to light-duty work for four hours per day, five days per week.

By decision dated July 7, 2022, OWCP terminated appellant's wage-loss compensation and medical benefits, effective that date. It found that the weight of the medical evidence rested with Dr. Sultan's February 28, 2022 opinion, which established that appellant's accepted work-related conditions had ceased and he no longer had any disability or residuals as a result of the accepted April 9, 2014 employment injury.

Following the termination decision, appellant submitted Dr. Parker's continuing treatment records dated October 28 and November 4, 2020, and July 25 and September 19, 2022.

In an October 28 and November 4, 2020 medical report, Dr. Parker reported that appellant presented for follow-up evaluation of neck pain from an April 9, 2014 employment injury. He noted an October 19, 2020 MRI scan of the cervical spine which revealed C3-4 and C4-5 bulge with central herniation impressing on the thecal sac and C6-7 broad bulge. Dr. Parker diagnosed HNP of the cervicothoracic region and cervical radiculopathy.

In a July 25, 2022 note, Dr. Parker diagnosed other cervical disc displacement at C4-5 and C5-6. He reported that appellant had returned to light-duty work.

In a July 26, 2022 report, Dr. Parker discussed appellant's accepted April 9, 2014 employment injury, reviewed diagnostic studies, and summarized his medical history following the motor vehicle accident (MVA). He detailed appellant's examination findings from 2014 to present, which revealed pain, tenderness spasm, and restricted ROM along the cervical and lumbar spine. Dr. Parker diagnosed disc herniation at L5-S1 and disc herniation at C4-5 and C5-6. He recommended physical therapy treatment, a trial of epidural injections at the cervical and lumbar spine, and possible surgery if conservative treatment was unsuccessful. Dr. Parker opined that appellant continued to have permanent, partial disability. He further opined that, assuming the history of injury was correct, there was a direct cause and effect relationship between the work-related MVA and appellant's clinical findings. Dr. Parker discussed appellant's medical conditions found upon diagnostic testing, including left C5 radiculopathy, and recommended referral to a neurologist for further evaluation.

In a September 19, 2022 note, Dr. Parker noted complaints of ongoing neck and back pain. On examination, appellant had limited ROM, tenderness and spasm of the cervical and lumbar spine. Dr. Parker diagnosed cervicalgia without disc disorder and low back pain.

On November 11, 2022 appellant, through counsel, requested reconsideration of the OWCP decision. Counsel argued that appellant's work-related injuries had not resolved as evidenced in Dr. Parker's reports. He noted submission of Dr. Parker's July 26, 2022 report in support of appellant's claim, which established ongoing conditions related to the accepted April 9, 2014 employment injury. Counsel further asserted that, at a minimum, the claim required further development due to a conflict in the medical opinion evidence.

By decision dated November 16, 2022, OWCP denied modification of its July 7, 2022 decision.

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.³ After it has determined that, an employee has a disability causally related to his or her employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.⁴ Its 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.⁶ 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.⁷

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 July 7, 2022, as he no longer had disability or residuals causally related to his accepted April 9, 2014 employment injury.

In a February 28, 2022 report, Dr. Sultan, OWCP referral physician, reviewed appellant's history of injury, provided physical examination findings, and opined that appellant's current condition was not related to the accepted April 9, 2014 employment injury. He further explained that his examination of the cervical and thoracolumbar spine revealed stable findings that were neurologically intact, noting that there were no objective physical findings to correlate with

³ *Z.D.*, Docket No. 19-0662 (issued December 5, 2019); *see 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).

⁴ *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).

⁵ *See P.T.*, Docket No. 21-0328 (issued May 2, 2022); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁶ *Z.D.*, *supra* note 3; *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005); *A.P.*, Docket No. 08-1822 (issued August 5, 2009). *See also Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁷ *T.C.*, Docket No. 20-1163 (issued July 13, 2021); *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002); *Furman G. Peake*, *id.*

appellant's subjective complaints of generalized pain. Dr. Sultan concluded that appellant's work-related condition had resolved, and that no further treatment was medically warranted.

The Board finds that the weight of the medical evidence with respect to OWCP's termination action is represented by the well-rationalized opinion of Dr. Sultan. The September 28, 2022 report of Dr. Sultan establishes that appellant no longer had employment-related disability or residuals causally related to the accepted April 9, 2014 employment injury. The Board has reviewed the opinion of Dr. Sultan and finds that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of work-related disability and residuals. Accordingly, OWCP properly relied on Dr. Sultan's opinion in terminating appellant's wage-loss compensation and medical benefits.⁸

Appellant submitted a series of reports from Dr. Parker dated April 21 through May 31, 2022 documenting findings regarding his neck and back conditions. Dr. Parker diagnosed disc herniation at L5-S1, C4-5, and C5-6. However, OWCP has not accepted the lumbar and cervical disc herniations as employment related. Accordingly, these reports are insufficient to overcome the weight of the medical evidence accorded to Dr. Sultan, or to create a conflict in medical opinion as to whether appellant's accepted conditions had resolved.⁹

In a May 31, 2022 work status report, Dr. Parker reported that appellant could return to light-duty work with restrictions for four hours per day, five days per week. His form reports, however, are of limited probative value as they fail to provide medical rationale explaining how appellant had continuing disability or residuals causally related to the accepted April 9, 2014 employment injury.¹⁰ The April 26 and 29, 2022 diagnostic studies also lack probative value as they do not address whether the employment injury caused or aggravated any of the diagnosed conditions.¹¹

As the weight of the medical evidence establishes that appellant had no further employment-related disability or residuals effective July 7, 2022 due to the accepted April 9, 2014 employment injury, the Board finds that OWCP has met its burden of proof to terminate his wage-loss compensation and medical benefits.

LEGAL PRECEDENT -- ISSUE 2

When OWCP properly terminated compensation benefits, the burden shifts to appellant to establish continuing disability or residuals on or after that date causally related to the accepted injury.¹² To establish causal relationship between the accepted conditions as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical

⁸ *S.V.*, Docket No. 23-0474 (issued August 1, 2023).

⁹ *D.L.*, Docket No. 22-0161 (issued March 10, 2023).

¹⁰ *See E.H.*, Docket No. 23-0503 (issued July 20, 2023); *L.S.*, Docket No. 19-0959 (issued September 24, 2019); *J.F.*, Docket No. 17-1716 (issued March 1, 2018).

¹¹ *F.D.*, Docket No. 19-0932 (issued October 3, 2019).

¹² *See J.N.*, Docket No. 20-1030 (issued November 20, 2020); *L.C.*, Docket No. 18-1759 (issued June 26, 2019).

evidence based on a complete medical and factual background supporting such causal relationship.¹³

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met his burden of proof to establish continuing disability or residuals, on or after July 7, 2022, causally related to his accepted April 9, 2014 employment injury.

Following the July 7, 2022 termination, appellant submitted Dr. Parker's medical treatment records dated October 28 and November 4, 2020, and July 25, and September 19, 2022. In a July 26, 2022 medical report, Dr. Parker asserted that the April 9, 2014 employment injury had not resolved. He diagnosed disc herniation at L5-S1 and disc herniation at C4-5 and C5-6, which he related to the April 9, 2014 MVA based on appellant's examination findings from 2014 to present documenting pain, tenderness, spasm, and restricted ROM along the cervical and lumbar spine. However, Dr. Parker failed to provide sufficient medical rationale to establish that appellant had continuing residuals of his accepted lumbar sprain.¹⁴ Nor did he specifically address how any current disability or need for medical treatment was causally related to the accepted employment-related conditions and thus his report is of little probative value.¹⁵ The Board has held that a report is of limited probative value regarding causal relationship if it does not contain sufficient medical rationale explaining how an employment injury could have caused or aggravated a medical condition.¹⁶ Accordingly, these reports are of limited probative value.

As the medical evidence of record is insufficient to establish continuing disability or residuals, on or after July 7, 2022, causally related to the accepted April 9, 2014 employment injury, the Board finds that appellant has not met his burden of proof.¹⁷

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 July 7, 2022, as he no longer had disability or residuals causally related to his accepted April 9, 2014 employment injury. The Board further

¹³ *Id.*

¹⁴ A.V., Docket No. 23-0230 (issued July 28, 2023).

¹⁵ See *P.B.*, Docket No. 21-0894 (issued February 8, 2023); *M.L.*, Docket No. 20-1682 (issued June 24, 2021); *K.E.*, Docket No. 17-1216 (issued February 22, 2018).

¹⁶ *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).

¹⁷ See *R.G.*, Docket No. 22-0165 (issued August 11, 2022).

finds that appellant has not met his burden of proof to establish continuing disability or residuals, on or after July 7, 2022, causally related to his accepted April 9, 2014 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the November 16, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 21, 2024
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

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