

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective April 2, 2025, as he no longer had disability or residuals causally related to his accepted February 2, 1999 employment injury.

FACTUAL HISTORY

On February 2, 1999 appellant, then a 35-year-old air traffic controller, filed a traumatic injury claim (Form CA-1) alleging on that date he injured his neck, right shoulder, back, hip, and right knee when he slipped and fell on wet stairs while in the performance of duty. He stopped work on that date. OWCP accepted the claim for neck and lumbar sprains and contusions of the right knee and shoulder. Appellant attempted to return to light-duty work on September 12, 1999, but there was no light-duty work available. OWCP paid wage-loss compensation on the periodic rolls beginning August 8, 2000.

In reports dated April 14, 1999 through April 9, 2013, Dr. Howard I. Baum, a Board-certified orthopedic surgeon, reviewed an April 6, 1999 magnetic resonance imaging (MRI) scan and diagnosed mid-to-left-sided herniated disc at L4-5 with mild segmental stenosis or lumbar derangement.

On June 8, 1999 appellant underwent an electromyogram/nerve conduction velocity (EMG/NCV) study, which was negative for radiculopathy. On June 11, August 12, and September 3, 1999 Dr. John Bendo, a Board-certified orthopedic surgeon, reviewed an MRI scan which showed evidence of significant degeneration at L4-5 and L5-S1 and a herniated disc at L4-5. He diagnosed continued low back pain with radiating features.

On April 24, 2000 Dr. Kenneth Falvo, a Board-certified orthopedic surgeon, and OWCP's second opinion physician, found that the accepted cervical and lumbar sprains, had resolved and that the right knee and shoulder contusions had healed. He also diagnosed degenerative disc disease L4-5 and L5-S1.

Dr. Baum submitted reports dated February 26, 2015 through June 17, 2020, diagnosing employment-related L4-5 herniated disc with mild segmental stenosis, lumbar derangement, and radiculopathy. On physical examination he found right quadriceps atrophy and sensory disturbances in the L5-S1 distribution. Dr. Baum supported appellant's total disability from work. On July 13, 2017, appellant underwent an EMG/NCV study which demonstrated right L5 radiculopathy. He also underwent a lumbar MRI scan which demonstrated right disc herniation at L5-S1 with right S1 nerve compression.

In a June 8, 2018 second opinion report, Dr. Andrew Farber, an osteopath, diagnosed neck sprain, lumbar sprain, contusions of the right shoulder and knee. He found continuing employment-related disability and residuals. Dr. Farber was unable to consider the most recent lumbar MRI scan but further diagnosed lumbar radiculopathy.

On February 24, 2020 OWCP referred appellant along with a statement of accepted facts (SOAF), the case record, and a series of questions, to Dr. Leon Sultan, a Board-certified

orthopedic surgeon, for a second opinion evaluation to determine the nature and extent of appellant's employment-related conditions and his work capacity.

In a June 22, 2020 report, Dr. Sultan related the history of injury and reviewed the SOAF and medical history. On physical examination, he found right knee hypertrophic bony change without ligamentous instability. Dr. Sultan diagnosed post-traumatic derangement of the lumbar spine including L5-S1 herniation and post-traumatic derangement of the right knee causally related to the February 2, 1999 employment injury. Appellant underwent additional diagnostic studies in June 2020 which demonstrated L5-S1 degenerative disc disease with right disc herniation. In a July 8, 2020 supplemental report, Dr. Sultan related that there were residual mild hypertrophic bony change of the right knee or post-traumatic osteoarthritic changes. He further related that appellant continued to experience lower back symptoms due to an employment-related post-traumatic lumbar disc herniation at L4-5.

In treatment notes dated June 30, 2020 through March 12, 2024, Dr. Baum related appellant's ongoing pain in his neck and low back and reviewed diagnostic studies finding bilateral L5 radiculopathy and degenerative changes in the lumbar spine. He opined that "the incident [appellant] described is the competent medical cause of the injury." Dr. Baum noted that appellant's complaints and objective findings on examination were consistent with the history of the injury. From February 25, 2010 through March 12, 2024 Dr. Baum completed attending physician's reports (Form CA-20) finding that appellant was totally disabled due to L5 radiculopathy caused by the accepted employment incident.

In a second opinion report dated April 26, 2022, Dr. Jonathan Paul, a Board-certified orthopedic surgeon, diagnosed lumbar spinal stenosis, right shoulder sprain and contusions, and right knee sprain resolved. He found that appellant's lumbar spine condition was ongoing and that he was totally disabled from his date-of-injury position due to this condition.

On April 2, 2024 OWCP referred appellant along with a SOAF, the case record, and a series of questions, to Dr. Sean Lager, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine the nature and extent of appellant's employment-related conditions and his work capacity.

On April 9, 2024 Dr. Baum completed a Form CA-20 diagnosing bilateral L5 radiculopathy and multilevel lumbar disc impingement based on electrodiagnostic studies. In response to whether the diagnosed conditions were caused or aggravated by work activities, he related that appellant had a history of a fall at work on wet and slippery stairs. Dr. Baum found that appellant was totally disabled due to persistent and irretractable right knee and back pain.

Counsel, in an April 17, 2024 letter, requested that OWCP expand the acceptance of appellant's claim to include the additional conditions of mild hypertrophic bony change of the right knee and post-traumatic lumbar disc herniation at L4-5 as diagnosed by Dr. Sultan.

On April 22, 2024 Dr. Baum described the February 2, 1999 employment injury and related that due to his fall and low back injury, appellant sustained disc herniations at L4-5 and L5-S1 causing L5 radiculopathy. He found that appellant was totally disabled.

In an April 26, 2024 report, Dr. Lager noted his review of the SOAF and appellant's medical record. He performed a physical examination and reviewed diagnostic studies diagnosing cervical sprain/strain resolved, lumbar sprain resolved, right shoulder contusion resolved, and right knee contusion, resolved. Dr. Lager further determined that his findings did not establish the diagnoses of lumbar radiculopathy, lumbar herniated disc, lumbar internal derangement, right knee internal derangement, or lumbar degenerative disc disease. He found that there were no residuals of the accepted employment injury and that appellant could return to his date-of-injury position without restrictions due to the employment injury. Dr. Lager noted that due to his age, he had disability due to degenerative disease.

On May 7, 2024 OWCP requested clarification from Dr. Lager explaining how he reached his conclusions.

In an August 27, 2024 supplemental report, Dr. Lager related that appellant's subjective complaints did not clinically correlate with the objective findings. He noted that in 1999 the findings on diagnostic studies were negative for cervical and thoracic spine conditions. Dr. Lager further related that a lumbar MRI scan dated April 6, 1999 revealed a mild herniated disc at L4-5 with segmental stenosis, while a June 23, 2020 lumbar MRI scan revealed disc herniations at L2-3, L3-4, and disc bulges at L4-5 and L5-S1. He determined that the additional findings were not related to the February 2, 1999 employment injury. Dr. Lager opined that therefore the diagnoses of lumbar radiculopathy, lumbar herniated disc, lumbar internal derangement, right knee internal derangement, and lumbar degenerative disc disease were not related to the employment injury. He attributed appellant's additional diagnoses to degenerative disc disease.

OWCP declared a conflict in medical opinion between Dr. Baum, appellant's treating physician, and Dr. Lager, the second opinion physician, regarding the extent of any employment-related conditions and disability.

On October 1, 2024 OWCP referred appellant along with a SOAF, the case record, and a series of questions to Dr. Frank J. Corrigan, a Board-certified orthopedic surgeon, for an impartial medical examination to resolve the conflict in medical opinion.

Dr. Baum completed a November 18, 2024 note continuing to attribute appellant's lumbar radiculopathy and disc pathology to his February 2, 1999 employment injury. He opined that the February 2, 1999 employment incident was the competent medical cause of injury, that appellant's complaints and symptoms were consistent with the history of injury, and that the history of injury was consistent with the objective findings on examination. Dr. Baum found that appellant was totally disabled from work.

In a report dated December 2, 2024, Dr. Corrigan, serving as the impartial medical examiner (IME), reviewed appellant's history of injury, the SOAF, and indicated that he had reviewed medical records including diagnostic studies dated 2020. He performed a physical examination and related that appellant had only recently developed worsening symptoms associated with his lumbar spine, and that for many years he was symptom free. Dr. Corrigan related that he had some concerns that appellant had exhibited submaximal effort on examination. He further related the most recent imaging of a diagnostic study that he was

provided was the 2020 MRI scan of the lumbar spine, and that he suspected that appellant's chronic and degenerative changes had continued to progress such that he could not, with any degree of medical certainty, find that appellant's current symptoms were causally related to the 1999 incident rather than a consequence of the cumulative effective of the progressive degenerative changes that had occurred in the 25 years since that incident. Dr. Corrigan found no objective physical findings supporting the additional diagnoses of lumbar radiculopathy, lumbar herniated disc, lumbar spine derangement, right knee derangement or lumbar degenerative disc disease. He related that appellant's movement of the spine and knees was less on examination than that when seated prior to the examination. Dr. Corrigan determined that the work-related conditions had resolved many years ago, that appellant's current symptomatology was more likely than not related to chronic and degenerative changes, and that he could return to his date-of-injury position without restrictions.

Appellant underwent additional EMG/NCV studies on December 11, 2024, which demonstrated evidence of bilateral L5 radiculopathies.

On December 12, 2024 Dr. Baum opined that appellant's condition was worsening. He diagnosed cervical and lumbar spine herniated disc syndrome with persistent radiculopathy, right hip derangement, right shoulder sprain, and right knee contusion. Dr. Baum found that appellant was totally disabled and that the accepted employment injury was the competent medical cause of his diagnosed conditions.

On December 20, 2024 appellant underwent additional lumbar and cervical MRI scan.

On February 6, 2025 OWCP advised appellant that it proposed to terminate his wage-loss compensation and medical benefits, as he no longer had residuals or continuing disability causally related to his accepted February 2, 1999 employment injury. It informed him that the weight of the medical opinion evidence rested with the opinion of Dr. Corrigan and afforded him 30 days to submit evidence and argument challenging the proposed action.

Dr. Baum completed a February 20, 2025 Form CA-20 diagnosing lumbar spine derangement L4-5 and L5-S1 impingement and radiculopathy. He indicated that appellant had a history of fall at work on wet/slippery stairs and that he was totally disabled.

On March 5, 2025 appellant, through counsel, disagreed with the proposed termination. He submitted a February 19, 2025 narrative report from Dr. Baum which included a description of the February 2, 1999 employment incident. Dr. Baum reviewed the medical records, performed a physical examination, and noted that Dr. Corrigan's physical findings were not consistent with the additional electrodiagnostic testing in 2024 and that his assertion that appellant had been relatively symptom free did not comport with the history of medical treatment. He asserted that Dr. Corrigan's failure to note atrophy to the right deltoid, right biceps, the right quadriceps, and left calf muscles were concerning, and indicated that his physical examination lacked necessary detail. Dr. Baum further disagreed with Dr. Corrigan's conclusions and opined that appellant's history of trauma clearly played a role in developing his multiple levels of foraminal encroachment and the progression from lumbar radiculitis to right L5 radiculopathy to bilateral L5 radiculopathy. He opined that appellant's ongoing degenerative

condition was worsened by the 1999 employment injury, and that he had residuals and disability from work due to his accepted employment injury.

By decision dated April 2, 2025, OWCP terminated appellant's wage-loss compensation and medical benefits, effective that date. It found that the special weight of the medical evidence rested with the December 2, 2024 report of Dr. Corrigan, the IME.

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.³ 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.⁴ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵

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.⁶ For a conflict to arise the opposing physicians' viewpoints must be of virtually equal weight and rationale.⁷

ANALYSIS

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective April 2, 2025.

OWCP properly determined that a conflict in medical opinion evidence arose between Dr. Baum, appellant's treating physician, and OWCP's second opinion, Dr. Lager, as to the extent of appellant's employment-related conditions and his continuing employment-related disability and referred appellant to Dr. Corrigan to resolve the conflict in medical opinion.

In his December 2, 2024 report, Dr. Corrigan reviewed 2020 electrodiagnostic studies and indicated that he suspected progressive chronic and degenerative changes would be present on more recent studies, but did not request additional studies or explain why the accepted 1999

³ *K.T.*, Docket No. 22-1038 (issued June 22, 2023); *M.M.*, Docket No. 17-1264 (issued December 3, 2018); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁴ *T.N.*, Docket No. 22-0721 (issued September 14, 2022); *A.T.*, Docket No. 20-0334 (issued October 8, 2020); *E.B.*, Docket No. 18-1060 (issued November 1, 2018).

⁵ *T.N.*, *id.*; *R.L.*, Docket No. 20-1611 (issued September 30, 2022); *C.R.*, Docket No. 19-1132 (issued October 1, 2020); *Del K. Rykert*, 40 ECAB 284 (1988).

⁶ 5 U.S.C. § 8123(a); *R.H.*, Docket No. 20-1442 (issued February 9, 2022); *Q.S.*, Docket No. 20-0701 (issued November 10, 2021).

⁷ *R.H.*, *id.*; *Darlene R. Kennedy*, 57 ECAB 414, 416 (2006); *James P. Roberts*, 30 ECAB 1010 (1980).

employment incident did not aggravate or contribute to the progressive degenerative changes that he found. As such, the Board finds that Dr. Corrigan did not provide adequate medical rationale to support his conclusion; therefore, his opinion is insufficient to carry the special weight to resolve the conflict in medical evidence.⁸ Thus, OWCP has failed to meet its burden of proof.

CONCLUSION

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective April 2, 2025.

ORDER

IT IS HEREBY ORDERED THAT the April 2, 2025 decision of the Office of Workers' Compensation Programs is reversed.

Issued: May 16, 2025
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

⁸ *K.A.*, Docket No. 23-0773 (issued November 1, 2024); *L.F.*, Docket No. 20-1021 (issued June 30, 2021).