

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

C.G., Appellant)

and)

**DEPARTMENT OF HOMELAND SECURITY,
FEDERAL EMERGENCY MANAGEMENT
AGENCY, New Orleans, LA, Employer**)

**Docket No. 10-2039
Issued: May 13, 2011**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 5, 2010 appellant, through his attorney, filed a timely appeal from a June 22, 2010 decision of the Office of Workers' Compensation Programs affirming the termination of his compensation benefits. Pursuant to the Federal Employees' Compensation Act¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office properly terminated appellant's compensation for wage-loss and medical benefits effective February 14, 2010 on the grounds that he no longer had any residuals or disability causally related to his accepted employment-related injuries.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On September 22, 2008 appellant, then a 49-year-old temporary database management specialist, filed a traumatic injury claim alleging that on that day he scraped his right knee when he tripped over petition footing. The Office accepted the claim for a friction burn or abrasion of the leg, which was subsequently expanded to include a lumbar sprain.² By letter dated March 25, 2009, it placed appellant on the periodic rolls for temporary total disability.

In a November 10, 2009 work capacity evaluation (Form OWCP-5c), Dr. Charles R. Billings, a treating Board-certified orthopedic surgeon, checked “yes” to the question of whether appellant was capable of performing his usual job.

On December 10, 2009 the Office issued a notice proposing to terminate appellant’s compensation based on the November 10, 2009 form report from Dr. Billings, his treating physician, indicating that he was capable of performing his usual work duties.³

In a December 15, 2009 progress note, Dr. Billings diagnosed chronic lumbar strain and noted that appellant believed he was disabled from work due to pain. He indicated that appellant was capable of performing light or sedentary work and recommended a work hardening program.

By decision dated January 12, 2010, the Office finalized the termination of appellant’s compensation benefits effective February 14, 2010. It found the weight of the medical and factual evidence established that his accepted employment injury no longer precluded him from performing the duties of his date-of-injury job.

On January 25, 2010 appellant’s counsel requested a telephonic hearing, which was held on April 6, 2010.

By decision dated June 22, 2010, the Office hearing representative affirmed the November 3, 2009 decision terminating appellant’s compensation benefits.³

LEGAL PRECEDENT

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee’s benefits.⁴ After it has determined that an employee has disability causally related to her federal employment, it may not terminate compensation without establishing that the disability has ceased or that it is no longer related to

² Appellant was terminated from the employing establishment effective September 22, 2008.

³ The Board notes that, following the March 19, 2009 hearing representative’s decision, the Office received additional evidence. However, the Board may not consider new evidence on appeal. *See* 20 C.F.R. § 501.2(c)(1); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003); *M.B.*, Docket No. 09-176 (issued September 23, 2009).

⁴ *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

the employment.⁵ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁷ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.⁸

ANALYSIS

The Office based its termination of compensation benefits on a November 10, 2009 OWCP-5c report from Dr. Billings, who had treated appellant since his injury. Dr. Billings did not provide a history or results on examination. On the form report, he checked a box yes that appellant was capable of performing his regular job without further explanation.

As noted above, a rationalized medical opinion is one based on a complete factual and medical background and supported by medical rationale. Dr. Billings did not provide a complete factual and medical background or a rationalized medical opinion on the issue presented.⁹ It is the Office's burden of proof to terminate compensation for wage-loss and medical benefits, and the Office cannot meet its burden with an unrationalized medical report that is of little probative value, even if it is from appellant's treating physician. The weight of medical evidence, as discussed above, is based on its convincing quality and the care of the analysis manifested. The Board finds that the evidence of record is not sufficient to meet the Office's burden of proof to terminate compensation for wage-loss and medical benefits effective February 14, 2010.

CONCLUSION

The Board finds that the Office did not meet its burden of proof to terminate compensation for wage-loss and medical benefits effective February 14, 2010.

⁵ *I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

⁶ *See J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988); *I.R.*, Docket No. 09-1229 (issued February 24, 2010).

⁷ *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005); *A.P.*, Docket No. 08-1822 (issued August 5, 2009).

⁸ *Kathryn E. Demarsh*, *supra* note 7; *James F. Weikel*, 54 ECAB 660 (2003); *B.K.*, Docket No. 08-2002 (issued June 16, 2009).

⁹ It is well established that a checkmark "yes" on a form question is of diminished probative value. *Sedi L. Graham*, 57 ECAB 494 (2006); *Cecilia M. Corley*, 56 ECAB 662 (2005).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 22, 2010 is reversed.

Issued: May 13, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board