

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

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**L.S., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Monroe, NY, Employer**

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**Docket No. 12-1714  
Issued: March 1, 2013**

*Appearances:*  
*Paul Kalker, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

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

**JURISDICTION**

On August 13, 2012 appellant, through his attorney, filed a timely appeal from a June 25, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) denying modification of the termination of his compensation benefits. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) 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 OWCP properly terminated appellant's wage-loss and medical compensation benefits effective February 14, 2012 on the grounds that his accepted conditions had ceased without residuals.

On appeal, counsel contends that the evidence of record supports appellant's continuing employment-related disability and that the second opinion report from Dr. Harvey Seigel, a Board-certified orthopedic surgeon, was not rationalized and lacked probative value.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

OWCP accepted that appellant, then a 44-year-old letter carrier, sustained a lumbar sprain and pathologic fracture of the vertebrae in the performance of duty on January 26, 2011. He was placed on the periodic rolls on June 5, 2011 and did not return to work.

In reports dated August 22 through December 22, 2011, Dr. Scott L. Gottlieb, a Board-certified pain medicine specialist, diagnosed unspecified backache and spasm of muscle. On December 22, 2011 he found a cervical disc herniation and diagnosed pathological fracture of the vertebrae. Dr. Gottlieb opined that the condition was caused or aggravated by the employment injury and that appellant was totally disabled as of January 26, 2011.

OWCP referred appellant to Dr. Seigel for a second opinion evaluation to determine the nature and extent of his employment-related conditions. In an October 18, 2011 report, Dr. Seigel conducted a physical examination and reviewed a statement of accepted facts, history of the injury and the medical evidence of record. He stated that appellant complained of constant discomfort and dull pain in the right lower flank area and that any twisting, bending, weather changes or sitting or walking for prolonged periods caused increased pain. On examination, Dr. Seigel found no areas of tenderness or muscle spasm in the cervical, thoracic or lumbosacral spine. The Spurling's sign was negative bilaterally. Appellant was able to bend forward and bring his fingertips to within six inches of the floor easily and painlessly. He straightened up and assumed the sitting position from the resting supine position quickly, easily and painlessly. The neurological evaluation revealed equal and active deep tendon reflexes in the upper and lower extremities. Straight-leg raising was negative bilaterally. Dr. Seigel found no objective findings on examination that appellant suffered from residuals of the accepted conditions. He concluded that appellant's accepted conditions had resolved and appellant was capable of returning to full-time, full-duty work without limitations.

In a December 13, 2011 report, Dr. Alfred Becker, a Board-certified rheumatologist, noted that he examined appellant and his rheumatic work-up proved negative. He stated that a December 1, 2011 magnetic resonance imaging (MRI) scan showed impingement on the spinal cord and right neural foraminal narrowing. Dr. Becker opined that it was reasonable to assume that appellant's fall on January 26, 2011 was causally related to his current symptoms.

On December 27, 2011 Dr. George Alexander Jones, a Board-certified neurosurgeon, advised that appellant was initially seen for back pain following a January 2011 employment injury. About a month prior, appellant developed the onset of some interscapular pain. Additionally, he had some pain down into the right side of his neck into the shoulder. Dr. Jones diagnosed interscapular pain, right-sided neck and arm pain and thoracic cord syrinx and opined that these conditions were not causally related to the employment injury. He noted that appellant seemed to have some residual pain related to the employment injury. Dr. Jones concluded that there was no specific contraindication to a return to work.

By letter dated January 12, 2012, OWCP notified appellant that it proposed to terminate his compensation benefits based on the weight of the medical evidence, as represented by Dr. Seigel. It allotted 30 days for him to submit additional evidence or argument in disagreement with the proposed action.

In a January 17, 2012 report, Dr. Jones reiterated his diagnosis and opined that it represented an incidental finding. He reported that appellant's physical examination was stable and that a December 30, 2011 MRI scan of the thoracic spine demonstrated an unchanged appearance of the thoracic cord syrinx. On January 25, 2012 Dr. Gottlieb reiterated his diagnoses and indicated that appellant's neck and mid-low back pain limited his normal daily activities.

In a January 26, 2012 report, Dr. Andrew Faskowitz, a Board-certified neurologist and pain medicine specialist, indicated that appellant's back pain had resolved except for periodic spasticity. He opined that appellant had analgesic rebound headaches and that the pain in his right flank was likely myofascial. Appellant had no focal neurological deficits. Dr. Faskowitz recommended that appellant start light duty at work.

By decision dated February 14, 2012, OWCP terminated appellant's wage-loss and medical compensation benefits effective that day. It found the weight of the medical evidence was represented by Dr. Seigel.<sup>2</sup>

On March 22, 2012 appellant, through his attorney, requested reconsideration. He submitted reports from Dr. Gottlieb dated February 21 through March 20, 2012. Dr. Gottlieb stated that appellant suffered mid-low back pain since his January 26, 2011 employment injury. He opined that appellant's pain was causally related to his employment injury and opined that he had a 75 percent permanent disability. Dr. Gottlieb advised that appellant was unable to work as a letter carrier and provided restrictions of no lifting greater than 15 pounds and no bending at the waist. Appellant also submitted a February 27, 2012 report by Dr. Rochelle Brief, a Board-certified physiatrist, who conducted a nerve conduction velocity (NCV) and electromyogram (EMG) study. Dr. Brief indicated that the electrodiagnostic evaluation was normal as the study showed no indication of an acute lumbar radiculopathy, nerve compression syndromes, peripheral neuropathy, plexopathy or myopathy. She opined that appellant's physical examination and history, however, could be consistent with a chronic lumbar strain with pain that was musculoskeletal in origin.

By decision dated June 25, 2012, OWCP denied modification of the February 14, 2012 termination decision, finding that Dr. Seigel represented the weight of medical opinion.

### **LEGAL PRECEDENT**

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.<sup>3</sup> 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

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<sup>2</sup> Appellant, through counsel, filed a notice of recurrence on January 10, 2012. By letter dated February 21, 2012, OWCP notified appellant that it could not consider a recurrence claim as his case had been denied by the February 14, 2012 termination decision.

<sup>3</sup> See *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

related to the employment.<sup>4</sup> OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>5</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.<sup>6</sup> 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.<sup>7</sup>

### ANALYSIS

OWCP accepted appellant's claim for lumbar sprain and pathologic fracture of the vertebrae. It terminated his compensation benefits effective February 14, 2012 on the grounds that the accepted employment-related condition had resolved without residuals based on the opinion of the second opinion examiner, Dr. Seigel. The issue to be determined is whether OWCP met its burden to terminate appellant's compensation benefits.

OWCP referred appellant to Dr. Seigel for a second opinion evaluation to determine the nature and extent of his employment-related condition. The Board finds that OWCP met its burden of proof to terminate appellant's medical and wage-loss compensation benefits based on the October 18, 2011 report of Dr. Seigel, who reviewed appellant's medical history, examined him and found no objective evidence of ongoing residuals or disability due to the accepted conditions. Dr. Seigel reviewed the statement of accepted facts and the medical record. He found no objective evidence of symptoms related to the accepted conditions. Dr. Seigel reported that he found no areas of tenderness or muscle spasm in the cervical, thoracic or lumbosacral spine. The Spurling's sign and straight-leg raising was negative bilaterally. Appellant was able to bend forward and bring his fingertips to within six inches of the floor easily and painlessly. He straightened up and assumed the sitting position from the resting supine position quickly, easily and painlessly. The neurological evaluation revealed equal and active deep tendon reflexes in the upper and lower extremities. Dr. Seigel found no objective findings on examination that appellant suffered from residuals of the accepted conditions. He concluded that appellant's accepted conditions had resolved and appellant was capable of returning to full-time, full-duty work.

The Board finds that Dr. Seigel's report represents the weight of the medical evidence. OWCP properly relied on his report in terminating appellant's benefits. The Board finds that Dr. Seigel had accurate history of the relevant facts and evaluated the course of appellant's condition. Dr. Seigel's opinion is based on proper factual and medical history and his report

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<sup>4</sup> See *I.J.*, 59 ECAB 524 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

<sup>5</sup> See *J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

<sup>6</sup> See *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

<sup>7</sup> See *James F. Weikel*, 54 ECAB 660 (2003).

contained a detailed summary of this history. He addressed the medical records to make his own examination findings to reach a reasoned conclusion regarding appellant's condition.<sup>8</sup> At the time benefits were terminated, Dr. Seigel found no basis on which to attribute any residuals or continued disability to appellant's accepted conditions. His opinion as set forth in his October 18, 2011 report is found to be probative and reliable. The Board finds that Dr. Seigel's opinion constitutes the weight of the medical evidence and is sufficient to justify OWCP's termination of benefits for the accepted conditions.

On December 27, 2011 Dr. Jones indicated that appellant seemed to have some residual pain related to the employment injury, but he failed to address how any continuing condition or medical restrictions and disability were causally related to the accepted conditions. Moreover, he concluded that there was no specific contraindication to appellant's return to work. Therefore, Dr. Jones' report is of diminished probative value and insufficient to overcome the weight of Dr. Seigel's report or to create a medical conflict.

On January 26, 2012 Dr. Faskowitz indicated that appellant's back pain had resolved except for periodic spasticity and recommended that appellant start light duty at work. He provided no medical rationale explaining that the periodic spasticity was employment related and why it rendered appellant partially disabled. As such, Dr. Faskowitz's report is of diminished probative value.

In his reports, Dr. Gottlieb diagnosed unspecific backache and spasm of muscle. On December 22, 2011 he found a cervical disc herniation and diagnosed pathological fracture of the vertebrae. Dr. Gottlieb opined that the condition was caused or aggravated by the employment injury and that appellant was totally disabled as of January 26, 2011. On January 25, 2012 he indicated that appellant's neck and mid-low back pain limited his normal daily activities. On February 21, 2012 Dr. Gottlieb opined that appellant's pain was causally related to his employment injury and opined that he had a 75 percent permanent disability. His reports did not specifically explain how any continuing condition or medical restrictions and disability were causally related to the accepted employment injuries. Thus, Dr. Gottlieb's reports are of diminished probative value and insufficient to overcome the weight of Dr. Seigel's report or to create a medical conflict.

On December 13, 2011 Dr. Becker found that appellant's rheumatic work-up proved negative. He indicated that a December 1, 2011 MRI scan showed impingement on the spinal cord and right neural foraminal narrowing. Dr. Becker opined that it was reasonable to assume that appellant's fall on January 26, 2011 was causally related to his current symptoms. His reports failed to address how any continuing condition or medical restrictions and disability were causally related to the accepted conditions of lumbar sprain and pathologic fracture of the vertebrae. Therefore, Dr. Becker's reports are of diminished probative value and insufficient to overcome the weight of Dr. Seigel's report or to create a medical conflict.

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<sup>8</sup> See *Michael S. Mina*, 57 ECAB 379 (2006) (the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion are facts, which determine the weight to be given to each individual report).

On February 27, 2012 Dr. Brief concluded that appellant's NCV and EMG study was normal and opined that his physical examination and history, however, could be consistent with a chronic lumbar strain with pain that was musculoskeletal in origin. Nevertheless, she did not specifically address how any continuing condition or medical restrictions and disability were causally related to the accepted employment injuries. Thus, the report is insufficient to overcome the weight of Dr. Seigel's report.

On appeal, counsel contends that the evidence of record supports appellant's continuing employment-related disability and that the second opinion report from Dr. Seigel was not rationalized and lacked probative value. However, as explained, Dr. Seigel's report represents the weight of the medical evidence as it was based on an accurate history, results of physical and diagnostic testing, accompanied by a rationalized medical opinion. It establishes that appellant's accepted conditions resolved. For the reasons stated above, the Board finds counsel's arguments are not substantiated.

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 properly terminated appellant's wage-loss and medical compensation benefits effective February 14, 2012 on the grounds that his accepted conditions had ceased without residuals.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 25, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 1, 2013  
Washington, DC

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

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

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