

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

C.B., Appellant)	
)	
and)	Docket No. 20-1511
)	Issued: September 23, 2021
U.S. POSTAL SERVICE, IRVING MAIN POST OFFICE, Irving, TX, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 10, 2020 appellant filed a timely appeal from a May 18, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

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 21, 2019, as he no longer had disability or residuals causally related to his accepted June 30, 2016 employment conditions; and

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence on appeal. 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.*

(2) whether appellant has met his burden of proof to establish continuing disability or residuals causally related to his accepted June 30, 2016 employment conditions on or after July 21, 2019.

FACTUAL HISTORY

On July 1, 2016 appellant, then a 48-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on June 30, 2016 he became dehydrated while in the performance of duty. He explained that he experienced cramping of both hands and legs, and a strange stinging went through his neck and back. Appellant stopped work on the date of injury.

OWCP initially accepted the claim for heat exhaustion anhidrotic (resolved). On August 17, 2017 it expanded the acceptance of the claim to include the conditions of lumbar and cervical radiculopathy, and muscle weakness (generalized) resolved. OWCP paid appellant wage-loss compensation on the supplemental rolls from August 1, 2016 through March 31, 2018 and on the periodic compensation rolls effective April 1, 2018.

In a November 20, 2017 report, Dr. Rory Allen, an osteopath specializing in family medicine, noted that on June 30, 2016 appellant suffered heat stroke, fell, and passed out while on his route. He diagnosed heat stroke, radiculopathy of the cervical spine, radiculopathy of the lumbar spine, cervical intervertebral disc syndrome and lumbar intervertebral disc syndrome. Dr. Allen opined that appellant remained temporarily totally disabled from the June 30, 2016 employment injury. In a November 30, 2017 progress report, he assessed cervical intervertebral disc with radiculopathy, lumbar intervertebral disc with radiculopathy, heat stroke, and muscle weakness. Dr. Allen noted that appellant's physical evaluation indicated that he could perform sedentary to light-duty work with a physical demand level of 10 to 20 pounds. He, however, indicated in a November 30, 2017 duty status report (Form CA-17), that appellant remained totally disabled.

On December 22, 2017 OWCP referred appellant for a second opinion examination with Dr. Jack H. Henry, a Board-certified orthopedic surgeon. It requested that he provide an opinion regarding whether appellant continued to have residuals or disability related to his accepted employment conditions. OWCP also requested that he address whether the conditions of cervical radiculopathy and lumbar radiculopathy were related to the accepted work-related conditions. The November 20, 2017 statement of accepted facts (SOAF) noted accepted conditions as: heat exhaustion (resolved), muscle weakness (resolved), radiculopathy, lumbar region, and radiculopathy, cervical region.

In a January 31, 2018 report, Dr. Henry reviewed appellant's history of injury, the SOAF, the medical record and set forth examination findings. He opined that appellant's cervical and lumbar radiculopathy conditions were attributable to the heatstroke on June 30, 2016 when appellant fell on the ground causing injury to his neck and lower back. In a second report dated February 8, 2018, Dr. Henry related that a functional capacity evaluation (FCE) was performed on February 8, 2018. He opined that appellant was unable to return to work in his date-of-injury position, but he could perform work in the light category based on the completed FCE. In a February 8, 2018 work capacity evaluation (Form OWCP-5c), Dr. Henry opined that appellant could work with temporary restrictions for four to six months, noting that maximum medical improvement (MMI) had not been reached.

On March 8, 2018 OWCP expanded the acceptance of the claim to include the additional conditions of cervical and lumbar intervertebral disc disorder with radiculopathy.

In an April 9, 2018 report, Dr. Paul Saadi, an orthopedic surgeon, indicated that appellant's examination findings, imaging results, and symptoms were consistent with appellant's traumatic injury of the cervical and lumbar spine.

OWCP subsequently received an authorization request for a three-level disc excision and fusion at C3-4, C4-5, and C5-6.

Dr. Allen continued to opine that appellant remained temporarily totally disabled from work due to his employment conditions and would remain disabled pending surgery.

On June 25, 2018 OWCP updated the SOAF to include all the accepted conditions. No mechanism of injury was reported.

In a June 29, 2018 report, Dr. Franklin M. Epstein, a Board-certified neurosurgeon serving as the district medical adviser (DMA), reviewed the medical record and SOAF. He opined that the proposed three-level disc excision and fusion procedure at C3-4, C4-5, and C5-6 was not medically necessary for treatment of the employment injury.

On December 3, 2018 OWCP determined that there was a conflict in the medical opinion evidence between Dr. Allen, the attending physician, and Dr. Henry, OWCP's second opinion physician, as to whether appellant continued to be totally disabled causally related to his accepted conditions.³ In order to resolve the conflict, OWCP referred appellant, pursuant to section 8123(a) of FECA (5 U.S.C. § 8123(a)), to Dr. James F. Hood, a Board-certified orthopedic surgeon, for an impartial medical examination.

In a February 28, 2019 report, Dr. Hood discussed appellant's factual and medical history and reported the findings of appellant's February 21, 2019 physical examination. He indicated that appellant had no signs of radiculopathy on examination. In the absence of correlating physical examination findings to the magnetic resonance imaging studies, Dr. Hood opined that appellant was not a candidate for surgery. He also explained that appellant would not be a candidate for any arthrodesis as there was no documentation of any segmental instability. Dr. Hood further opined that appellant no longer had residuals of the employment-related injury. He indicated that the injury had occurred almost three years ago and the record revealed that appellant had a soft tissue sprain/strain event of the neck and back. Dr. Hood explained that the documentation of record failed to include any significant signs of radiculopathy and appellant's examination was negative for any radiculopathy or significant sequelae of anything that happened three years ago. He explained that since it was his opinion that appellant had nothing more than a sprain/strain event, he would have been at maximum medical improvement no later than three months following the event or October 1, 2016. Anything after that would be secondary to other issues, not the single event of June 30, 2016. Following a February 26, 2019 FCE, Dr. Hood opined, in an undated addendum, that appellant could work at a light level. He noted, however, that the FCE revealed a

³ It also noted that a conflict also existed in the medical opinion evidence between appellant's treating physicians and OWCP's District Medical Adviser as to whether appellant required a three-level disc excision and fusion from C3 to C6.

less than maximum effort, which he indicated corresponded to his examination findings of symptom magnification. Dr. Hood thus opined that, in relation to the June 30, 2016, employment injury, appellant could return to his prior employment. He emphasized that there was no evidence that the employment event was anything more than a sprain/strain event, which would resolve in a short and finite period. Dr. Hood concluded that any current signs and symptoms were no longer related to the event, but a myriad of factors including deconditioning, symptom magnification, secondary gain, iatrogenically-based pain behaviors, and age-related degenerative disc changes.

In a February 19, 2019 report, Dr. Allen continued to place appellant off work. He explained that appellant was temporarily totally disabled due to ongoing severe pain and taking pain medication, and was unable to tolerate limited work-related duties. Dr. Allen also explained that appellant failed conservative treatment and was awaiting referral to a spine surgeon to determine surgical candidacy and approval.⁴

In a notice dated March 14, 2019, OWCP advised appellant that it proposed to terminate his wage-loss compensation and medical benefits as he ceased to have disability or residuals causally related to his accepted employment conditions. It indicated that the special weight of the medical opinion evidence with respect to employment-related disability and residuals rested with the opinion of Dr. Hood, the impartial medical specialist. OWCP afforded appellant 30 days to challenge the proposed termination action.

OWCP continued to receive progress reports and attending physician's reports (Form CA-20) from Dr. Allen, in which he opined that appellant was totally disabled due to lumbar radiculopathy, cervical radiculopathy, cervical disc disorder with radiculopathy, and intervertebral disc disorders with radiculopathy. Dr. Allen additionally opined that appellant had severe ongoing pain and was taking pain medication for which he was unable to tolerate limited work-related duties. He also noted that appellant was pending referral to a spine surgeon.

In an April 26, 2019 report, Dr. Mathias Daniels, an orthopedic spine surgery specialist, provided an assessment of other intervertebral disc displacement, lumbosacral region; other intervertebral disc displacement, lumbar region, radiculopathy, lumbosacral region, sprain of ligaments of lumbar spine, other cervical disc displacement, mid-cervical region, radiculopathy, cervical region. He opined that appellant continued to exhibit symptoms and examination findings consistent with traumatic injury to the cervical and lumbar spine. Dr. Daniels also indicated that appellant's lumbar radicular pain remained debilitating despite conservative care.

OWCP also received August 3, 2016 emergency department notes; diagnostic tests performed on January 24 and March 29, 2019; and FCE's dated February 14, February 26, and April 25, 2019.

By decision dated July 15, 2019, OWCP terminated appellant's wage-loss compensation and medical benefits, effective July 21, 2019, as he no longer had disability or residuals causally related to his accepted June 30, 2016 employment conditions. It found that the special weight of

⁴ By decision dated March 14, 2019, OWCP denied surgical authorization for a three-level disc excision and fusion at C3-4, C4-5, and C5-6. The special weight of the medical evidence was accorded to Dr. Hood's impartial medical opinion.

the medical opinion evidence with respect to employment-related disability and residuals rested with the opinion of Dr. Hood, the impartial medical specialist.

On February 10, 2020 appellant requested reconsideration of the termination decision and submitted additional evidence.

Additional reports, including Form CA-17s and Form CA-20s, were received from Dr. Allen. Dr. Allen reported a history of the injury, diagnosed conditions, treatment synopsis and that appellant wanted to discuss pursuing medical disability retirement. In reports dated July 24, 2019 through May 12, 2020, he also noted that appellant was able to start limited duty on July 24, 2019.

In an April 15, 2019 report, Dr. Andrew Indresano, a Board-certified orthopedic surgeon, noted the history of injury as appellant having a syncopal episode and that he reported having two more syncopal episodes while working which also resulted in falls. He noted examination findings and provided assessments of cervicgia, cervical intervertebral disc disorder with myelopathy, spondylosis, cervical radiculopathy, cervical spinal stenosis, lower back pain, lumbar degenerative disc disease, lumbar radiculopathy, and lumbar spinal stenosis and spondylolisthesis. Surgical opinions were discussed.

By decision dated May 18, 2020, OWCP denied modification of its July 15, 2019 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.⁵ It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment injury.⁶ OWCP's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁷

The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.⁸ To terminate authorization for medical treatment, OWCP must establish that the employee no longer has residuals of an employment-related condition that require further medical treatment.⁹

⁵ *S.P.*, Docket No. 19-0196 (issued June 24, 2020); *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 *S.P.*, *id.*; *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 *D.G.*, *supra* note 5; *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Rykert*, 40 ECAB 284, 29596 (1988).

⁸ *S.P.*, *supra* note 5; *J.W.*, Docket No. 19-1014 (issued October 24, 2019); *L.W.*, Docket No. 18-1372 (issued February 27, 2019).

⁹ *D.G.*, *supra* note 5; *L.S.*, Docket No. 19-0959 (issued September 24, 2019); *R.P.*, Docket No. 18-0900 (issued February 5, 2019).

Section 8123(a) of FECA provides in pertinent part: “If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.”¹⁰ In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.¹¹

ANALYSIS -- ISSUE 1

The Board finds that OWCP has not met its burden of proof to terminate appellant’s wage-loss compensation and medical benefits, effective July 21, 2019, as he no longer had disability or residuals causally related to his accepted June 30, 2016 employment conditions.

Appellant’s attending physician, Dr. Allen, opined that appellant was totally disabled from work pending surgery. OWCP referred appellant for a second opinion with Dr. Henry, who opined that appellant was capable of working eight hours per day with restrictions. Due to the conflict between Dr. Allen and Dr. Henry, it properly referred appellant for an impartial medical examination with Dr. Hood to resolve the conflict in the medical opinion evidence, pursuant to 5 U.S.C. § 8123(a).

In a February 28, 2019 report, Dr. Hood noted that he had reviewed the medical record. He related appellant’s physical examination findings, which he indicated did not reveal signs of radiculopathy. Dr. Hood opined that appellant no longer has residuals of the employment-related injury. He indicated that the record revealed appellant had a soft tissue sprain/strain event of the neck and back. Dr. Hood explained that since it was his opinion that appellant had nothing more than a sprain/strain event, appellant would have been at maximum medical improvement no later than three months following the event or October 1, 2016. In an addendum to the February 28, 2019 report, he noted that the February 26, 2019 FCE revealed that appellant had set forth a less than maximum effort, which he indicated corresponded to his examination findings of symptom magnification. Dr. Hood thus opined that, in relationship to the June 30, 2016 employment injury, appellant could return to his prior employment. He emphasized that there was no evidence that the employment event was anything more than a sprain/strain event, which would resolve in a short and finite period. Dr. Hood thus opined that any current signs and symptoms were no longer related to the event, but a myriad of factors including deconditioning, symptom magnification, secondary gain, iatrogenically-based pain behaviors, and age-related degenerative disc changes.¹² Based on this report, OWCP terminated appellant’s wage-loss compensation and medical benefits, effective July 21, 2019.

¹⁰ 5 U.S.C. § 8123(a).

¹¹ *D.G.*, *supra* note 5; *D.M.*, Docket No. 18-0746 (issued November 26, 2018); *R.H.*, 59 ECAB 382 (2008); *James P. Roberts*, 31 ECAB 1010 (1980).

¹² Dr. Hood also opined that appellant was not a candidate for surgery. As noted, by decisions dated March 14 and October 11, 2019, OWCP denied surgical authorization for a three-level disc excision and fusion at C3-4, C4-5, and C5-6.

Dr. Hood specifically advised that it was his opinion that appellant had nothing more than a sprain/strain event on June 30, 2016. However, the SOAF provided to Dr. Hood specifically noted the conditions that had already been accepted as work related. The Board has long held that the report of an impartial medical specialist who disregards a critical element of the SOAF is defective and insufficient to resolve the existing conflict of medical opinion evidence.¹³ The Board thus finds that Dr. Hood's report is not entitled to the special weight as an impartial medical specialist and is insufficient to meet OWCP's burden of proof to terminate appellant's wage-loss compensation and medical benefits.

CONCLUSION

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective July 21, 2019.¹⁴

ORDER

IT IS HEREBY ORDERED THAT the May 18, 2020 decision of the Office of Workers' Compensation Programs is reversed.

Issued: September 23, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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

¹³ *C.G.*, Docket No. 20-0808 (issued April 23, 2021); *W.F.*, Docket No. 18-0653 (issued September 26, 2019); *B.B.*, Docket No. 18-1121 (issued January 8, 2019); *V.C.*, Docket No. 14-1912 (issued September 22, 2015).

¹⁴ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.