

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

S.V., Appellant)	
)	
and)	Docket No. 23-0474
)	Issued: August 1, 2023
DEPARTMENT OF THE ARMY, RESEARCH)	
DEVELOPMENT & ENGINEERING)	
COMMAND, Fort Mammoth, NJ, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On February 17, 2023 appellant filed a timely appeal from an October 19, 2022 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.

ISSUE

The issue is whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective October 19, 2022, as he no longer had disability or residuals causally related to his accepted May 28, 1975 employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board on a different issue.² The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On May 28, 1975 appellant, then a 24-year-old mason helper, filed a traumatic injury claim (Form CA-1) alleging that on that date he sustained injury to his lower back, right hip, and leg when rodding a concrete sidewalk while in the performance of duty. He stopped work on that date and returned to light-duty work on June 2, 1975. OWCP accepted the claim for lumbosacral strain. It paid appellant compensation on the periodic rolls.³

In a March 16, 2020 report, Dr. Nasser Ani, a Board-certified orthopedic surgeon and treating physician, diagnosed sprain of the lumbar spine and pelvis; lumbar intervertebral disc displacement, lumbar intervertebral disc degeneration, and sacroiliitis. He opined that appellant was totally and permanently disabled from work.

On September 23, 2021 OWCP referred appellant, along with the medical record and a statement of accepted facts (SOAF) to Dr. Frank J. Corrigan, a Board-certified orthopedic surgeon, for a second opinion to determine the status of appellant's accepted condition and his work restrictions.

In an October 21, 2021 report, Dr. Corrigan noted appellant's history of injury and medical treatment. He examined appellant and opined that appellant's work-related condition of lumbosacral strain had resolved. Dr. Corrigan explained that appellant's current symptoms and examination findings were not caused by the work injury and were the consequence of the cumulative effect of degenerative changes over the 46 years since the May 28, 1975 work injury. He opined that appellant had no disability relating to the employment injury. However, if appellant was still in work status, rather than retired, he would be limited to light-duty work.

On November 26, 2021 OWCP requested clarification from Dr. Corrigan. In a December 28, 2021 supplemental report, Dr. Corrigan explained that appellant's subjective complaints corresponded with the objective findings, however, they were a consequence of the cumulative effect of degenerative change over the prior 46 years. He opined that the work-related condition of lumbosacral strain had resolved, and the prognosis was good for continued stable function of the lumbosacral joint ligament. Dr. Corrigan explained that a sprain of the lumbosacral spine would take somewhere between 6 to 12 weeks to resolve and noted that it has now been approximately 46 years. He further noted that causality of the current symptoms could not be established, therefore, no further treatment was reasonable and medically appropriate for the accepted injury. Dr. Corrigan advised that work restrictions were not warranted related to the

² Docket No. 20-0906 (issued February 11, 2021).

³ On March 29, 1979 OWCP reduced appellant's wage-loss compensation based upon his ability to perform the duties of a constructed position of clerical sorter.

employment injury. He indicated that appellant had retired; however, if appellant was still working, he would be limited to light-duty status.

On January 20, 2022 OWCP expanded the acceptance of the claim to include bilateral lumbar radiculopathy.

On January 21, 2022 OWCP requested that Dr. Corrigan clarify his opinion based upon the updated accepted condition of bilateral lumbar radiculopathy. In a February 8, 2022 addendum report, Dr. Corrigan noted the additional accepted condition of bilateral lumbar radiculopathy. He indicated that his conclusions as stated in his prior reports remained unchanged. Dr. Corrigan explained that appellant's physical examination revealed no objective medical evidence of lumbar radiculopathy.

By letter dated February 10, 2022, OWCP requested that Dr. Ani review Dr. Corrigan's findings. In a March 3, 2022 report, Dr. Ani disagreed with Dr. Corrigan's opinion that appellant's work-related conditions had resolved. He opined that appellant's work-related diagnoses remained active and continued to cause symptoms. Dr. Ani noted that, due to appellant's age and condition, appellant was unfit to perform his prior duties as a mason helper.

On March 30, 2022 OWCP determined that a conflict of medical opinion existed between Dr. Ani and Dr. Corrigan as to whether appellant's work-related conditions had resolved.

On April 8, 2022 OWCP referred appellant for an impartial medical evaluation with Dr. David Weiss, a Board-certified orthopedist, serving as an impartial medical examiner (IME). It provided Dr. Weiss with a SOAF, the medical record, and a series of questions.

In a June 8, 2022 report, Dr. Weiss reviewed appellant's history of injury and medical treatment. He related extensive physical examination findings and diagnosed chronic lumbosacral strain and sprain, age-related progressive degenerative disc disease and osteoarthritis of the lumbar spine, and lumbar radiculopathy. Dr. Weiss opined that appellant's current conditions were not related to the work injury of May 28, 1975, and explained that appellant had progressive age-related degenerative disc disease and osteoarthritis which he could not relate at this time to his initial work-related injury of May 28, 1975. He advised that, based on appellant's current symptomatology and ongoing pathology, he agreed with Dr. Corrigan that appellant's work-related conditions had resolved and no further treatment was medically warranted.

In a notice dated July 12, 2022, OWCP proposed to terminate appellant's wage-loss compensation and medical benefits, as he no longer had disability or residuals causally related to his accepted May 28, 1975 employment injury. It found that the special weight of the medical evidence rested with the IME, Dr. Weiss. OWCP afforded appellant 30 days to submit additional evidence or argument in writing if he disagreed with the proposed termination.

In an August 2, 2022 statement, appellant noted his history of injury and treatment and provided copies of documents from the employing establishment dated August 4 and November 2, 1977.

By letters to Dr. Weiss dated August 12 and September 12, 2022, OWCP noted that one of appellant's treating physicians previously diagnosed a low-grade herniated nucleus pulposus at

L4-5 on the right side and opined that it was caused by the work-related incident on May 28, 1975. It requested that Dr. Weiss provide a supplemental report regarding whether the low-grade herniated nucleus pulposus at L4-5 on the right side was caused or aggravated by the May 28, 1975 work-related injury, and whether the condition had resolved. OWCP further noted that, if he found that the herniated nucleus pulposus L4-5 right side had not resolved and was caused or aggravated by the May 28, 1975 work injury, it requested his opinion as to whether appellant's degenerative disc disease and osteoarthritis of the lumbar spine were aggravated by the herniated disc.

In an October 10, 2022 supplemental report, Dr. Weiss responded to OWCP's questions and explained that a magnetic resonance imaging (MRI) scan performed in 2019 revealed no disc herniation and only spondylitic or age-related changes. He further explained that the sensory loss he found on the left side would not be related to a right-side L4-5 condition.

By decision dated October 19, 2022, OWCP finalized the notice of proposed termination of appellant's wage-loss compensation and medical benefits, effective that date. It found that the special weight of medical evidence rested with the IME, Dr. Weiss, who indicated in June 8 and October 10, 2022 reports, that appellant no longer had disability or residuals due to his May 28, 1975 employment injury.

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.⁴ 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.⁵ Its 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 to disability.⁷ 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.⁸

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

⁴ See *P.B.*, Docket No. 21-0894 (issued February 8, 2023); *D.G.*, Docket No. 19-1259 (issued January 29, 2020); *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).

⁵ 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).

⁶ *K.W.*, Docket No. 19-1224 (issued November 15, 2019); see *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁷ *J.W.*, Docket No. 19-1014 (issued October 24, 2019); *L.W.*, Docket No. 18-1372 (issued February 27, 2019).

⁸ *L.S.*, Docket No. 19-0959 (issued September 24, 2019); *R.P.*, Docket No. 18-0900 (issued February 5, 2019).

appoint a third physician (known as a referee physician or IME) who shall make an examination.⁹ For a conflict to arise the opposing physicians' viewpoints must be of virtually equal weight and rationale.¹⁰ When OWCP has referred the case to an IME 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

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective October 19, 2022, as he no longer had disability or residuals causally related to his accepted May 28, 1975 employment injury.

OWCP determined that there was a conflict in the medical opinion evidence between Dr. Ani, appellant's treating physician, and Dr. Corrigan, OWCP's second opinion examiner, as to appellant's disability status and need for medical treatment causally related to the May 28, 1975 employment injury. It properly referred appellant, pursuant to 5 U.S.C. § 8123(a), to Dr. Weiss for an impartial medical examination and an opinion to resolve the conflict.

In a June 8, 2022 report, Dr. Weiss, serving as the IME, reviewed appellant's history of injury, provided physical examination findings, and opined that appellant's current condition was progressive age-related degenerative disc disease and osteoarthritis, which was not related to the May 28, 1975 employment injury. He concurred with Dr. Corrigan that appellant's work-related conditions had resolved, and no further treatment was medically warranted.

In an August 12, 2022 letter to Dr. Weiss, OWCP noted that one of appellant's treating physicians previously found a low-grade herniated nucleus pulposus on the right side at L4-5, and requested that the IME provide a supplemental report as to whether it had resolved and whether it caused or aggravated appellant's degenerative conditions. In an October 10, 2022 supplemental report, Dr. Weiss noted that the 2019 MRI scan revealed no disc herniation and only spondylitic or age-related changes, and further explained that the sensory loss he found on the left side would not establish a right side L4-5 condition.

The factors that comprise the evaluation of medical opinion evidence include the opportunity for and thoroughness of physical examination, the accuracy, or 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.¹²

⁹ 5 U.S.C. § 8123(a); *see S.A.*, Docket No. 20-1168 (issued March 29, 2023); *R.S.*, Docket No. 10-1704 (issued May 13, 2011); *S.T.*, Docket No. 08-1675 (issued May 4, 2009).

¹⁰ *H.B.*, Docket No. 19-0926 (issued September 10, 2020); *C.H.*, Docket No. 18-1065 (issued November 29, 2018); *Darlene R. Kennedy*, 57 ECAB 414, 416 (2006); *James P. Roberts*, 31 ECAB 1010 (1980).

¹¹ *S.S.*, Docket No. 19-0766 (issued December 13, 2019); *W.M.*, Docket No. 18-0957 (issued October 15, 2018); *Gloria J. Godfrey*, 52 ECAB 486 (2001); *James P. Roberts*, *id.*

¹² *See P.J.*, Docket No. 22-0905 (issued November 15, 2022); *K.R.*, Docket No. 22-0019 (issued July 11, 2022); *Nicolette R. Kelstrom*, 54 ECAB 570 (2003); *Anna M. Delaney*, 53 ECAB 384 (2002).

The Board finds that the opinion of the IME, Dr. Weiss, is entitled to the special weight of the medical opinion evidence and establishes that appellant no longer had employment-related disability or residuals causally related to the accepted May 28, 1975 employment injury. Dr. Weiss based his opinions on a proper factual and medical history, and extensive physical examination findings. He noted that appellant's physical examination revealed that the accepted employment-related conditions had resolved, and that appellant's disability and work restrictions were due to nonemployment-related conditions. Accordingly, OWCP properly relied on Dr. Weiss' opinion in terminating appellant's wage-loss compensation and medical benefits.

CONCLUSION

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective October 19, 2022, as he no longer had disability or residuals causally related to his accepted May 28, 1975 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the October 19, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 1, 2023
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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

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