

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

_____)	
M.H., Appellant)	
)	
and)	Docket No. 24-0470
)	Issued: July 25, 2024
DEPARTMENT OF HOMELAND SECURITY,)	
FEDERAL AIR MARSHAL SERVICE,)	
College Park, GA, Employer)	
_____)	

Appearances:
*Stephen Larkin, for the appellant*¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On April 1, 2024 appellant, filed a timely appeal from a February 29, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

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 February 29, 2024, as he no longer had disability or residuals causally related to his accepted November 7, 2016 employment injury.

FACTUAL HISTORY

This case has previously been before the Board on a different issue.³ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On November 9, 2016 appellant, then a 47-year-old federal air marshal, filed a traumatic injury claim (Form CA-1) alleging that on November 7, 2016 he unexpectedly twisted his back while holding a roller board suitcase at shoulder level while in the performance of duty. He stopped work on November 8, 2016. On December 1, 2016 OWCP accepted appellant's claim for lower back (lumbar) strain. It paid him wage-loss compensation on the supplemental rolls, effective December 24, 2016, and on the periodic rolls, effective June 25, 2017.

On July 26, 2018 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits because his November 7, 2016 employment injury had resolved.

By decision dated January 18, 2019, OWCP finalized the termination of appellant's wage-loss compensation and medical benefits, effective January 19, 2019.

Appellant appealed to the Board. By decision dated September 9, 2019, the Board reversed the January 18, 2019 termination decision.⁴

OWCP subsequently received additional evidence. A magnetic resonance imaging (MRI) scan of the lumbar spine dated December 20, 2016 revealed small right foraminal disc protrusion and mild facet hypertrophy at L3-4 causing mild right neural foraminal stenosis, minimal degenerative anterolisthesis, minimal disc bulge, moderate facet hypertrophy at L4-5 causing mild bilateral neural foraminal stenosis, and mild-to-moderate right-sided mild left-sided facet hypertrophy at L5-S1.

In reports dated January 14 and October 26, 2020, Dr. Samuel A. Yoakum, a Board-certified physiatrist, treated appellant for complaints of sacroiliac (SI) joint pain. Upon examination of appellant's lumbar spine, he observed tenderness to palpation of the right superior sacral pole, SI joint compression, positive Gaenslen's test on the right, reduced range of motion of the lumbar spine due to stiffness and tightness, and intact strength and sensation. Dr. Yoakum diagnosed work-related event pulling luggage from overhead compartment, right SI joint pain, thoracolumbar scoliosis, and chronic pain syndrome. On September 28, 2020 he performed an intra-articular injection and diagnosed SI joint pain.

³ Docket No. 19-0782 (issued September 9, 2019).

⁴ *Id.*

OWCP referred appellant, along with the medical record, a statement of accepted facts (SOAF) and a series of questions, to Dr. Michael A. MacKay, a Board-certified orthopedic surgeon, for a second-opinion evaluation regarding the status of his November 7, 2016 employment injury and work capacity. In a July 20, 2021 report, Dr. MacKay reviewed appellant's history of injury and noted that appellant's claim was accepted for lumbar sprain. Upon physical examination of the lumbar spine, he observed no significant tightness in the hamstrings, intact sensation, tenderness to palpation in the right lower lumbar paraspinals, mildly tender over the SI, and slight increased pain on external and internal rotation of the right hip. Dr. MacKay opined that appellant continued to suffer residuals of his lumbar sprain injury. He indicated that appellant was not likely to return to his job as an air marshal but he should be able to return to a medium strength level duty.

On January 12, 2022 OWCP provided Dr. Yoakum with Dr. MacKay's July 20, 2021 report and requested that he review and comment. No response was received.

On August 23, 2023, OWCP referred appellant along with the medical record, a SOAF and a series of questions to Dr. Nicholas A. Grimaldi, an osteopath Board-certified in orthopedic surgery, for a second-opinion evaluation regarding the status of his November 7, 2016 employment injury and work capacity. In an October 2, 2023 report, Dr. Grimaldi reviewed the SOAF and the medical evidence of record. He described the November 7, 2016 employment injury and noted that appellant's claim was accepted for lumbar sprain. Upon examination of appellant's lumbar spine, Dr. Grimaldi observed negative bilateral straight leg raises, intact muscle testing with some giving way, nontender to palpation of the paraspinal muscles and spinous process, tenderness to palpation over the right S1 joint, and low back pain with the Farber's test. He reported range of motion of 70 degrees forward flexion and 15 degrees back extension.

In response to OWCP's questions, Dr. Grimaldi reported that his subjective complaints of low back pain correspond to his physical examination findings, noting that appellant reported pain in the low right SI joint region, tenderness to palpation, and he moved very slowly. He noted that x-rays revealed spondylolisthesis of L4-5 with associated spondylosis. Dr. Grimaldi advised that appellant had pain at the SI joint, which correlated with a diagnoses of right SI joint dysfunction. He noted that appellant's work-related condition of lumbar strain has resolved and explained that strains of the lumbar region typically resolve within two to three months of conservative care. Dr. Grimaldi reported that appellant continued to complain of pain and underwent intra-articular injections with some relief. He noted that appellant reached maximum medical improvement (MMI). Dr. Grimaldi did not recommend that appellant return to his date-of-injury position as he has not performed the job in over seven years, and he would be a risk to himself and others with his guarding of his low back and his inability to apprehend individuals. He advised that appellant could return to a position without limitations on lifting as long as it is done in a controlled manner. In a work capacity evaluation (Form OWCP-5c), Dr. Grimaldi noted no restrictions for the accepted lumbar sprain. He returned appellant to work eight hours a day with restrictions of lifting as tolerated in a controlled situation.

On October 17, 2023 Dr. Sterling Roaf, Jr., a Board-certified physiatrist and employing establishment physician, reviewed the medical record, including Dr. Grimaldi's October 2, 2023 report. He indicated that Dr. Grimaldi did not provide a rationalized opinion explaining how SI joint dysfunction was causally related to appellant's employment and he failed to complete the Form OWCP-5c and provide a strength level at which appellant could work. Dr. Roaf recommended that OWCP obtain an addendum report from Dr. Grimaldi addressing these issues.

On October 31, 2023 OWCP requested Dr. Grimaldi provide a supplemental report and address whether the SI joint dysfunction was causally related to the accepted November 17, 2016 employment injury, whether appellant's accepted work condition resolved, provide clear work restrictions on the Form OWCP-5c, and clarify his statement of "lifting as tolerated."

In a supplemental report dated November 13, 2023, Dr. Grimaldi indicated that appellant's examination revealed SI joint dysfunction; however, this condition was not causally related to the accepted November 17, 2016 employment injury and diagnosis of lumbar strain. He opined that the work-related lumbar strain had resolved and indicated that these strains typically resolve in two-to-three months with conservative treatment. Dr. Grimaldi advised that the newly diagnosed condition of SI joint dysfunction was not related to the lumbar strain. He noted that appellant could return to work without restrictions based on his lumbar strain.

On January 18, 2024 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits because his November 7, 2016 employment injury had resolved. It found that the weight of medical evidence rested with the October 2 and November 13, 2023 reports of Dr. Grimaldi, who found that appellant's lumbar sprain had resolved and he was no longer disabled from work. OWCP afforded appellant 30 days to submit additional evidence or argument, in writing, if he disagreed with the proposed termination.

In response, appellant submitted a January 20, 2024 statement, wherein he indicated that OWCP informed him that the examination was solely to determine if he should be reinstated into the vocational rehabilitation program and was not for the termination of his benefits. He submitted an addendum to his response to the proposed termination of benefits.

By decision dated February 29, 2024, OWCP finalized the termination of appellant's wage-loss compensation and medical benefits, effective the same date.

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.⁵ 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.⁶ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁷

⁵ See *D.B.*, Docket No. 19-0663 (issued August 27, 2020); *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).

⁶ See *D.G.*, *id.*; *R.P.*, *id.*; *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

⁷ *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).

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

ANALYSIS

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective February 29, 2024, as he no longer had disability or residuals causally related to the accepted November 7, 2016 employment injury.

OWCP referred appellant to Dr. Grimaldi for a second opinion evaluation to determine the status of appellant's accepted lumbar strain and his work capacity. In reports dated October 2 and November 13, 2023, Dr. Grimaldi opined that appellant no longer had disability or residuals causally related to his accepted lumbar strain, and no further medical treatment was needed. He noted his review of the SOAF and medical records and examined appellant. On physical examination, Dr. Grimaldi reported essentially normal findings with negative bilateral straight leg raises, intact muscle testing with some giving way, and no tenderness to palpation of the paraspinal muscles and spinous process. He opined that appellant sustained a work-related lumbar strain, which resolved. Dr. Grimaldi indicated that his unremarkable orthopedic examination with regard to the lumbar strain confirmed that he was medically capable of returning to full-duty work with no restrictions and no further medical treatment was necessary. In a Form OWCP-5c, he indicated that appellant reached MMI and could resume his usual job without restrictions.

The Board finds that Dr. Grimaldi based his opinion on a proper factual and medical history. Dr. Grimaldi provided physical examination findings and a well-rationalized opinion based on the medical evidence regarding the accepted conditions causally related to appellant's November 7, 2016 employment injury. Accordingly, the Board finds that Dr. Grimaldi's second opinion reports represent the weight of the medical evidence in terminating appellant's wage-loss compensation and medical benefits.¹⁰

Appellant submitted a series of reports from Dr. Yoakum dated January 14, September 28, and October 26, 2020, which provided findings regarding his SI joint, diagnosed work-related event pulling luggage from overhead compartment, right SI joint pain, thoracolumbar scoliosis, and chronic pain syndrome, and noted that continued medical treatment was needed. The Board notes that OWCP did not accept diagnosis of right SI joint pain, thoracolumbar scoliosis, and chronic pain syndrome. Accordingly, these reports are insufficient to overcome the weight of the

⁸ *A.G.*, Docket No. 19-0220 (issued August 1, 2019); *A.P.*, Docket No. 08-1822 (issued August 5, 2009); *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005); *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁹ *K.W.*, *supra* note 7; *see A.G.*, *id.*; *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002); *Furman G. Peake*, *id.*

¹⁰ *R.P.*, Docket No. 20-0891 (issued September 20, 2021); *K.W.*, *id.*; *N.G.*, Docket No. 18-1340 (issued March 6, 2019); *A.F.*, Docket No. 16-0393 (issued June 24, 2016).

medical evidence accorded to Dr. Grimaldi, or to create a conflict in medical opinion as to whether appellant's accepted conditions had resolved.¹¹

The Board, therefore, finds that OWCP properly terminated appellant's wage-loss compensation and medical benefits, effective February 29, 2024.

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 has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective February 29, 2024, as he no longer had disability or residuals causally related to his accepted November 7, 2016 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the February 29, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 25, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

¹¹ *Id.*