

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

_____)	
J.B., Appellant)	
)	
and)	Docket No. 24-0390
)	Issued: May 10, 2024
U.S. POSTAL SERVICE, BELMONT POST OFFICE, Belmont, MA, 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
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On February 27, 2024 appellant filed a timely appeal from a January 25, 2024 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.

ISSUES

The issues are: (1) whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective October 15, 2021, as he no longer had disability or residuals causally related to his accepted November 19, 1997 employment injury; and (2) whether appellant has met his burden of proof to establish continuing employment-related disability or residuals, on or after October 15, 2021, causally related to his accepted November 19, 1997 employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On November 19, 1997 appellant, then a 44-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on November 19, 1997 he sustained injuries to his back and leg when he slipped on ice while in the performance of duty. He stopped work on November 21, 1997. OWCP accepted appellant's claim for lumbar radiculopathy, central herniated nucleus pulposus (HNP) at L2-3 and lateral HNP at L3-4, both affecting the L3 nerve root. It paid him wage-loss compensation on the periodic rolls, effective June 16, 2002.

In 1998 appellant underwent OWCP-authorized discectomy and disc fusion surgery.

OWCP later expanded the acceptance of appellant's claim to include low testosterone secondary to narcotics intake, and chronic pain disorder.

On June 10, 2021 OWCP referred appellant, along with the medical record, a statement of accepted facts (SOAF), and a series of questions, to Dr. Rafael Lopez, a Board-certified orthopedic surgeon, for a second opinion evaluation regarding the status of his employment-related conditions.

In a July 31, 2021 report, Dr. Lopez noted his review of the medical record and the SOAF. He indicated, "[t]his case was accepted for the following conditions: central HNP L2-3 and lateral HNP L3-4 both affecting the L3 nerve root." On physical examination of appellant's back, Dr. Lopez observed unrestricted range of motion and no evidence of significant swelling, crepitation, spasm, or atrophy. In response to OWCP's questions, he indicated that appellant's subjective complaints did not correspond to the objective findings. Dr. Lopez noted that all objective findings on physical examination were normal and there was nothing on physical examination to support an organic basis for the subjective complaints. He opined that appellant's work-related conditions had resolved "since they were treated surgically." Dr. Lopez concluded that appellant could return to his date-of-injury job. He also completed a work capacity evaluation (Form OWCP-5c), indicating that appellant could return to work on a full-time basis without restrictions.

On September 2, 2021 OWCP issued a notice proposing to terminate appellant's wage-loss compensation and medical benefits because he no longer had disability, or residuals causally related to his accepted November 19, 1997 employment injury. It afforded him 30 days to submit additional evidence or argument, in writing, if he disagreed with the proposed termination of benefits. Appellant did not respond.

By decision dated October 15, 2021, OWCP terminated appellant's wage-loss compensation and medical benefits, effective that date. It found that the weight of the medical evidence rested with Dr. Lopez, OWCP's referral physician, who had determined in a July 31, 2021 report that he did not have disability or residuals due to the accepted November 19, 1997 employment injury.

On October 14, 2022 appellant, through his then-counsel, requested reconsideration. Then-counsel asserted that appellant's benefits were terminated in error and that appellant's medical and wage-loss compensation benefits should be reinstated. He further contended that Dr. Lopez' report was not well rationalized.

Appellant submitted an August 1, 2022 report, wherein Dr. Charles V. Toman, a Board-certified orthopedic surgeon, reported examination findings, including pain with hip range of motion and normal-to-light touch sensation throughout the lower extremities. Dr. Toman discussed appellant's diagnostic imaging tests and diagnosed low back pain and other dorsalgia.

By decision dated October 19, 2022, OWCP denied modification of its October 15, 2021 termination decision.

OWCP subsequently received a December 14, 2022 magnetic resonance imaging (MRI) scan of the lumbar spine, which demonstrated findings of postoperative changes of laminectomy and fusion between the L2-3 and L5-S1 disc levels, and severe stenosis above the surgical levels with loss of cerebrospinal fluid.

On January 18, 2023 appellant requested reconsideration.

By decision dated March 13, 2023, OWCP denied modification.

On March 27, 2023 appellant requested reconsideration and submitted a March 17, 2023 report by Dr. Shivam Upadhyaya, a Board-certified orthopedic surgeon, who noted appellant's complaints of chronic moderate thoracic pain. On physical examination, Dr. Upadhyaya observed tenderness to palpation along the lower back and negative straight leg raise testing. He diagnosed spinal stenosis of the lumbar region at multiple levels.

By decision dated April 5, 2023, OWCP denied modification.

Appellant subsequently requested reconsideration and resubmitted Dr. Upadhyaya's March 17, 2023 report.

By decision dated August 30, 2023, OWCP denied appellant's request for reconsideration of the merits of the claim, pursuant to 5 U.S.C. § 8128(a).

On November 9, 2023 appellant again requested reconsideration and submitted a September 12, 2023 report, wherein Dr. Upadhyaya indicated that appellant "suffers from after affects [sic] from initial injury."

By decision dated January 25, 2024, OWCP denied modification.

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.² After it has determined that, an employee has a disability causally related to his or her employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.³ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence

² *Z.D.*, Docket No. 19-0662 (issued December 5, 2019); *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005).

³ *See R.P., id.*; *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

based on a proper factual and medical background.⁴ The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁵ To terminate authorization for medical treatment, OWCP must establish that the claimant no longer has residuals of an employment-related condition, which would require further medical treatment.⁶

ANALYSIS

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective October 15, 2021.

In a report dated July 31, 2021, Dr. Lopez, OWCP's referral physician, noted his review of the medical records and the SOAF. He indicated, "[t]his case was accepted for the following conditions: central HNPL2-3 and lateral HNPL3-4 both affecting the L3 nerve root." On physical examination of appellant's back, Dr. Lopez observed unrestricted range of motion and no evidence of significant swelling, crepitation, spasm, or atrophy. In response to OWCP's questions, he indicated that appellant's subjective complaints did not correspond to the objective findings. Dr. Lopez noted that all objective findings on physical examination were normal and there was nothing on physical examination to support an organic basis for the subjective complaints. He opined that appellant's work-related conditions had resolved "since they were treated surgically." Dr. Lopez concluded that appellant could return to his date of injury job and completed a Form OWCP-5c indicating that he could return to work on a full-time basis without restrictions.

The Board notes that Dr. Lopez did not provide any notable discussion of appellant's accepted conditions from the November 19, 1997 employment injury, *i.e.*, lumbar radiculopathy, central HNP at L2-3 and lateral HNP at L3-4, both affecting the L3 nerve root; low testosterone secondary to narcotics intake; and chronic pain disorder. Importantly, Dr. Lopez provided no mention whatsoever that OWCP had accepted appellant's claim for lumbar radiculopathy, low testosterone secondary to narcotics intake, and chronic pain disorder, and therefore he did not provide any discussion of how they would have resolved.⁷ Thus, his opinion that appellant's accepted conditions had resolved lacks probative value. As noted above, OWCP's burden of proof to terminate compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁸ Dr. Lopez' opinion regarding continuing disability and residuals causally related to the accepted November 19, 1997 employment injury is conclusory in nature. The Board has held that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship, which is unsupported by medical rationale.⁹

⁴ See *P.T.*, Docket No. 21-0328 (issued May 2, 2022); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁵ *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005); *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁶ *T.C.*, Docket No. 20-1163 (issued July 13, 2021); *James F. Weikel*, 54 ECAB 660 (2003); *Furman G. Peake*, *id.*

⁷ See *J.L.*, Docket No. 19-1901 (issued April 7, 2021).

⁸ *Supra* note 5.

⁹ *L.G.*, Docket No. 19-0142 (issued August 8, 2019); *C.M.*, Docket No. 14-0088 (issued April 18, 2014).

As the July 31, 2021 report of Dr. Lopez does not contain sufficient medical rationale to justify the termination of appellant's wage-loss compensation and medical benefits, effective October 15, 2021, the Board finds that OWCP failed to meet its burden of proof.¹⁰

CONCLUSION

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective October 15, 2021.

ORDER

IT IS HEREBY ORDERED THAT the January 25, 2024 decision of the Office of Workers' Compensation Programs is reversed.

Issued: May 10, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

¹⁰ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.