

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

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<b>H.J., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 24-0879</b>
	)	<b>Issued: October 29, 2024</b>
<b>DEPARTMENT OF THE TREASURY,</b>	)	
<b>BUREAU OF ENGRAVING AND PRINTING,</b>	)	
<b>Washington, DC, Employer</b>	)	
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*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On August 30, 2024 appellant filed a timely appeal from an August 14, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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<sup>1</sup> Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of appellant's oral argument request, it was asserted that oral argument should be granted because he wished to explain the basis of his disagreement with OWCP's decision. The Board, in exercising its discretion, denies appellant's request for oral argument as his case can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied, and this decision is based on the case record as submitted to the Board.

<sup>2</sup> 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 August 14, 2024, as he no longer had disability or residuals causally related to his June 29, 1978 employment injury.

## FACTUAL HISTORY

On July 10, 1978 appellant, then a 31-year-old custodian, filed a traumatic injury claim (Form CA-1) alleging that on June 29, 1978, he suffered a pulled muscle in his left leg when he pushed a trash box up the ramp of a trash compactor while in the performance of duty. OWCP accepted the claim for recurrent acute back strain.<sup>3</sup>

On July 28, 1981 appellant underwent unauthorized left-sided L5 hemilaminectomy, partial left-sided S1 hemilaminectomy, partial left L5-S1 facetectomy, excision of L5 herniated disc on the left, and foraminotomy of the S1 nerve root, left side.

Following intermittent periods of light duty, appellant retired from the employing establishment on February 28, 1986.

In an April 3, 1986 report, Dr. Hampton J. Jackson, Jr., a Board-certified orthopedic surgeon, recounted that appellant had last been examined on February 28, 1986 "at which time his retirement papers came through."<sup>4</sup>

Appellant continued under medical treatment. In reports dated from April 23, 2002 through July 25, 2008, Dr. Jackson opined that the June 29, 1978 employment injury caused a lumbar disc injury necessitating the July 28, 1981 surgery and resulted in lumbar radiculopathy and spinal stenosis. He opined that appellant was disabled from work commencing in 1986.<sup>5</sup>

Following a vocational rehabilitation effort, by decision dated October 20, 2008, OWCP reduced appellant's compensation effective October 26, 2008 based on his ability to perform the selected position of check casher, Department of Labor's *Dictionary of Occupational Titles* (DOT) No. 211.462-026.<sup>6</sup>

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<sup>3</sup> Thereafter, OWCP modified its acceptance of the claim to lumbar sprain.

<sup>4</sup> Thereafter, OWCP noted in its FECA Nonfatal Summary (Form CA-800) that appellant had "[r]etired" on February 28, 1986. Beginning on July 15, 1998, appellant completed and signed annual EN-1032 forms indicating that he had not worked during the 15-month period prior to the date of the form.

<sup>5</sup> A December 13, 2007 electromyogram and nerve conduction velocity (EMG/NCV) study revealed left L5-S1 radiculopathy and right L4-5 radiculopathy.

<sup>6</sup> OWCP continued to receive reports from Dr. Jackson dated from October 14, 2008 through July 14, 2011, wherein he found appellant disabled from work. An October 24, 2008 lumbar magnetic resonance imaging (MRI) scan demonstrated postoperative changes on the left at L5-S1 with postoperative scar formation and residual degenerative disc changes, and diffuse disc degenerative changes. An October 30, 2008 EMG/NCV study of the lower extremities revealed chronic denervation of the bilateral lower extremities and gluteal muscles in the L5-S1 distribution.

OWCP received reports dated April 30, 2012 through October 3, 2022 by Dr. George H. Drakes, a Board-certified physiatrist, wherein he diagnosed post-laminectomy syndrome, lumbar region, degeneration of lumbar or lumbosacral intervertebral disc, thoracic or lumbosacral neuritis or radiculitis, lumbosacral facet syndrome, cervical facet syndrome, cervical radiculitis, and chronic pain syndrome. Dr. Drakes opined that appellant continued “to suffer from musculoskeletal injury” as a direct result of the accepted June 29, 1978 employment injury.

On August 15, 2023 OWCP referred appellant, along with a statement of accepted facts (SOAF), a copy of the case record, and a series of questions, to Dr. Randy F. Davis, a Board-certified orthopedic surgeon, for a second opinion evaluation regarding the status of his employment-related conditions. In a September 15, 2023 report, Dr. Davis reviewed appellant’s history of injury, and noted physical examination findings of a 12 centimeter (cm) posterior surgical scar with impression and muscle atrophy, some cogwheeling in all muscle ranges of motion, and 4/5 left hip flexion weakness. He diagnosed “[p]revious left hip strain.” Dr. Davis opined that the accepted lumbar sprain had resolved as the surgical procedures listed on the SOAF were not OWCP-authorized and appellant’s current complaints could no longer be related to the June 26, 1978 injury. He opined that appellant could not resume his date-of-injury position due to nonwork-related issues. Dr. Davis completed a work capacity evaluation (Form OWCP-5c), which indicated that appellant could perform full-time sedentary work with twisting, bending, and stooping limited to one hour a day, and lifting limited to 10 pounds.

On May 29, 2024 OWCP proposed to terminate appellant’s wage-loss compensation and medical benefits because his June 29, 1978 employment injury had resolved. It found that the weight of medical evidence rested with the September 15, 2023 medical report of Dr. Davis, OWCP’s second opinion physician, who opined that he no longer had any disability or residuals causally related to his accepted June 29, 1978 employment injury. OWCP afforded appellant 30 days to submit additional evidence or argument, in writing, if he disagreed with the proposed termination. No response was received.

By decision dated August 14, 2024, OWCP finalized the termination of appellant’s wage-loss compensation and medical benefits, effective that same day. It found that the weight of the medical evidence rested with Dr. Davis, the second opinion physician, who had determined in his September 15, 2023 report that appellant did not have disability or residuals due to a work-related lumbar injury.

### **LEGAL PRECEDENT**

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of compensation benefits.<sup>7</sup> After it has determined that, an employee has disability causally related to his or her federal employment, it may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the

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<sup>7</sup> *A.D.*, Docket No. 18-0497 (issued July 25, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

employment.<sup>8</sup> OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>9</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.<sup>10</sup> To terminate authorization for medical treatment, OWCP must establish that the appellant no longer has residuals of an employment-related condition, which require further medical treatment.<sup>11</sup>

### ANALYSIS

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective August 14, 2024, as he no longer had disability or residuals causally related to the accepted June 29, 1978 employment injury.

OWCP referred appellant to Dr. Davis for a second opinion evaluation to determine the status of appellant's accepted lumbar sprain and his work capacity. In a September 15, 2023 report, Dr. Davis 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. Davis observed physical examination findings of a 12 cm posterior surgical scar with impression and muscle atrophy, some cogwheeling in all muscle ranges of motion, and 4/5 left hip flexion weakness. He opined that the work-related lumbar sprain had resolved, and that as the surgical procedures were not OWCP-authorized, appellant's current condition was not related to the accepted June 26, 1978 employment injury. In a Form OWCP-5c, Dr. Davis opined that appellant could perform full-time sedentary work with restrictions.

The Board finds that Dr. Davis based his opinion on a proper factual and medical history wherein he provided physical examination findings, and a well-rationalized opinion based on the medical evidence regarding the accepted conditions causally related to appellant's June 29, 1978 employment injury. Accordingly, the Board finds that Dr. Davis' second opinion reports represent the weight of the medical evidence in terminating appellant's wage-loss compensation and medical benefits.<sup>12</sup>

Appellant submitted a series of reports from Dr. Jackson dated April 3, 1986 through July 25, 2008, in which he opined that the June 29, 1978 employment incident necessitated the

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<sup>8</sup> *A.G.*, Docket No. 18-0749 (issued November 7, 2018); *see also I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

<sup>9</sup> *V.L.*, Docket No. 24-0739 (issued August 26, 2024); *R.R.*, Docket No. 19-0173 (issued May 2, 2019); *T.P.*, 58 ECAB 524 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

<sup>10</sup> *L.W.*, Docket No. 18-1372 (issued February 27, 2019); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

<sup>11</sup> *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *A.P.*, Docket No. 08-1822 (issued August 5, 2009).

<sup>12</sup> *M.H.*, Docket No. 24-0470 (issued July 25, 2024); *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).

July 28, 1981 surgery, which resulted in lumbar radiculopathy and spinal stenosis. However, Dr. Jackson did not offer medical rationale to support his conclusion. The Board has held that a report is of limited probative value regarding causal relationship if it is conclusory and does not contain medical rationale explaining how a given medical condition/disability was related to the accepted employment injury.<sup>13</sup> Thus, Dr. Jackson's reports are insufficient to overcome the weight of the medical evidence accorded to Dr. Davis' second opinion, or to create a conflict of medical opinion.

OWCP also received a series of reports from Dr. Drakes dated April 30, 2012 through October 3, 2022, which provided findings regarding his cervical, thoracic, and lumbar spine, and diagnosed post-laminectomy syndrome, lumbar region, degeneration of lumbar or lumbosacral intervertebral disc, thoracic or lumbosacral neuritis or radiculitis, lumbosacral facet syndrome, cervical facet syndrome, cervical radiculitis, and chronic pain syndrome. The Board notes that OWCP did not accept these diagnoses. Accordingly, these reports are insufficient to overcome the weight of the medical evidence accorded to Dr. Davis, or to create a conflict in medical opinion as to whether appellant's accepted conditions had resolved.<sup>14</sup>

The Board, therefore, finds that OWCP properly terminated appellant's wage-loss compensation and medical benefits, effective August 14, 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 August 14, 2024, as he no longer had disability or residuals causally related to his June 29, 1978 employment injury.

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<sup>13</sup> *S.F.*, Docket No. 24-0304 (issued July 10, 2024); *see Y.D.*, Docket No. 16-1896 (issued February 10, 2017) (a report is of limited probative value regarding causal relationship if it does not contain medical rationale describing the relationship between work factors and a diagnosed condition/disability).

<sup>14</sup> *Supra* note 12.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 14, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 29, 2024  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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