

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

R.R., Appellant)	
)	
and)	Docket No. 22-1046
)	Issued: May 5, 2023
GOVERNMENT PRINTING OFFICE,)	
Washington, DC, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On July 7, 2022 appellant filed a timely appeal from a May 2, 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 met its burden of proof to terminate appellant's wage-loss compensation, effective May 2, 2022, as he no longer had disability causally related to his accepted July 9, 1987 employment injury.

FACTUAL HISTORY

On July 16, 1987 appellant, then a 39-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that on July 9, 1987 he injured his lower back when lifting a bundle of books while

¹ 5 U.S.C. § 8101 *et seq.*

in the performance of duty. He stopped work on July 10, 1987. OWCP accepted the claim for lumbosacral strain and cervical intervertebral disc displacement without myelopathy. On December 26, 1993 appellant returned to light-duty work as a clerk. OWCP accepted multiple recurrence claims and paid him wage-loss compensation on the periodic rolls, effective October 6, 2002.²

On November 29, 2021 OWCP referred appellant, together with a statement of accepted facts (SOAF), a series of questions, and the medical record to Dr. Rafael Lopez, a Board-certified orthopedic surgeon, for a second opinion evaluation regarding the status of appellant's accepted conditions, extent of disability, and appropriate treatment. In an attachment to the referral letter, it noted that appellant's accepted conditions were sprain of lumbosacral (joint) (ligament), and displacement of cervical intervertebral disc without myelopathy. The enclosed August 21, 2019 SOAF noted that appellant's claim was accepted for back sprain and bulging disc. It also noted that appellant had not undergone surgery under this claim, but that there were indications of record that he had also undergone back surgery prior to his employment injury.

In a report dated December 18, 2021, Dr. Lopez noted the SOAF, appellant's history of injury, and medical treatment. He reported that appellant's claim had been accepted for lumbosacral joint/ligament sprain and cervical intervertebral disc displacement without myelopathy. Physical examination findings included a normal gait, and no evidence of significant swelling, erythema, crepitation, spasm, atrophy or deformity in the cervical, thorax, and sacroiliac. Dr. Lopez reported 45 degrees bilateral rotation, extension, and flexion, 10 degrees right lateral flexion, and 30 degrees left lateral flexion of the neck and 80 degrees flexion, 90 degrees sitting flexion, 20 degrees extension, and 30 degrees bilateral lateral bending of the lower back/sacroiliac. A neurological examination revealed normal results. Dr. Lopez noted his review of an October 8, 2015 lumbar magnetic resonance imaging (MRI) scan, which demonstrated degenerative changes, and a March 28, 2016 cervical MRI scan, which demonstrated degenerative stenosis, and indicated that he had not requested any additional diagnostic studies. In concluding he opined that appellant's work-related conditions had resolved as contusions, strains, and sprains were minor self-limiting conditions that, spontaneously healed within days or weeks, there were no objective findings or medical evidence that supported appellant's subjective complaints, and surgery had resolved his accepted conditions. Dr. Lopez opined that appellant was capable of performing his date-of-injury job without restrictions.

On March 31, 2022 OWCP advised appellant of its proposed termination of his wage-loss compensation as he no longer had disability causally related to his accepted employment injury. It indicated that the weight of the medical opinion evidence regarding employment-related disability rested with the December 18, 2021 report of Dr. Lopez. OWCP afforded appellant 30 days to present evidence or argument challenging the proposed termination action. No response was received.

By decision dated May 2, 2022, OWCP terminated appellant's wage-loss compensation effective that date, finding that he no longer had disability causally related to his accepted July 9,

² Appellant retired from the employing establishment effective December 3, 2003.

1987 employment injury. It accorded the weight of the medical evidence to the opinion of Dr. Lopez.

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.³ 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.⁴ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵

ANALYSIS

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation, effective May 2, 2022.

The Board finds that the December 18, 2021 report from Dr. Lopez lacks sufficient medical reasoning to establish that appellant no longer had any disability due to the accepted lumbosacral strain and cervical intervertebral disc displacement without myelopathy. Dr. Lopez opined that appellant could return to his date-of-injury job with no restrictions. He based this opinion in part on his examination and observation that appellant's 2015 and 2016 MRI scans showed degenerative changes and that new diagnostic testing was unnecessary to evaluate the current status of appellant's accepted conditions. Dr. Lopez concluded in general terms that sprains and strains usually resolved within days or weeks, but he did not explain when appellant's accepted lumbosacral strain no longer caused appellant disability, and he did not specifically address how he concluded that appellant accepted cervical disc displacement no longer caused disability.

OWCP's procedures dictate that, when an OWCP medical adviser, second opinion specialist, or impartial medical examiner renders a medical opinion based on a SOAF, which is incomplete or inaccurate, or does not use the SOAF as the framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether.⁶ The Board finds that Dr. Lopez failed to explain with medical rationale why appellant no longer had any disability

³ See *P.T.*, Docket No. 21-0328 (issued May 2, 2022); *T.C.*, Docket No. 20-1163 (issued July 13, 2021); *A.T.*, Docket No. 20-0334 (issued October 8, 2020); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁴ See *P.T.*, *id.*; *T.C.*, *id.*; *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

⁵ *P.T.*, *id.*; *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).

⁶ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3 (October 1990); see *K.L.*, Docket No. 21-0104 (issued February 24, 2022); *S.C.*, Docket No. 18-1011 (issued March 23, 2020).

due to the accepted conditions. Rationalized medical evidence must explain how the physician reached the conclusion he or she is supporting and must be based on a proper review of the SOAF.⁷

Once OWCP undertook development of the record, it was required to complete development of the record by procuring medical evidence that would resolve the relevant issue in the case.⁸ As it did not obtain a rationalized medical opinion from the second opinion physician, the Board finds that it failed to meet its burden of proof in terminating appellant's wage-loss compensation.

CONCLUSION

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation, effective May 2, 2022.

ORDER

IT IS HEREBY ORDERED THAT the May 2, 2022 decision of the Office of Workers' Compensation Programs is reversed.

Issued: May 5, 2023
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

⁷ *C.G.*, Docket No. 21-0171 (issued November 29, 2021); *B.B.*, Docket No. 19-1102 (issued November 7, 2019); *Beverly A. Spencer*, 55 ECAB 501 (2004).

⁸ *C.B.*, Docket No. 20-0629 (issued May 26, 2021); *J.F.*, Docket No. 17-1716 (issued March 1, 2018).