

FACTUAL HISTORY

On March 26, 2008 appellant, then a 32-year-old mail handler, filed an occupational disease claim alleging that her degenerative disc disease was caused by heavy lifting, pushing and constant walking and standing on concrete as part of her federal duties. On May 14, 2008 OWCP accepted her claim for aggravation of lumbar degenerative disc disease. It paid compensation for total disability and medical benefits.

Appellant was treated by Dr. Stephen Heis, a Board-certified physiatrist. In a report dated April 9, 2009, Dr. Heis stated that he saw appellant in follow-up regarding her degenerative disc disease of the lumbar spine at L5-S1 level, with grade 1 spondylolisthesis and bilateral *pars* defects. He noted that appellant did not improve after lumbar epidural steroid injection or after facet joint injections. Dr. Heis had medial branch blocks performed to see how this would help with her pain, but she did not obtain any benefit from this procedure. He stated that appellant's low back pain was aggravated by her daily activities due to her L5-S1 spondylolisthesis. It was primarily in the lumbosacral junction area and aggravated by sitting or standing greater than a half-hour or walking greater than one hour. Dr. Heis further noted that twisting also aggravated her back but that stretching, lying down and applying heat decreased her pain along with medication. He kept appellant off work. Dr. Heis noted that she was waiting to consult a surgeon since conservative treatment had failed.

OWCP referred appellant to Dr. Richard Sheridan, a Board-certified orthopedic surgeon, for a second opinion. In a June 29, 2009 report, Dr. Sheridan found that appellant's accepted aggravation of lumbar degenerative disc disease had resolved. He stated there was no diagnosed condition medically connected to her accepted lumbar condition and employment injury, and that she had a normal low back and lower extremities on examination. Dr. Sheridan opined that it was medically probable that appellant's work-related injury had resolved and that her current condition was due to the natural progression of the disease, a nonwork-related condition. He found that her subjective complaints were not consistent with the objective findings, although he did note that she provided a concerted effort through all phases of the evaluation. Dr. Sheridan noted that appellant did not have any physical limitations or any work restrictions attributable to her preexisting condition.

OWCP found a conflict in medical opinion between appellant's treating physician, Dr. Heis, and the second opinion physician, Dr. Sheridan, with regard to other ongoing residuals from the employment injury and work limitations. It referred her to Dr. Arthur Lee, a Board-certified orthopedic surgeon, selected as the impartial specialist. In a report dated December 22, 2009, Dr. Lee noted that, from a historical perspective, appellant sustained a temporary aggravation of grade 1 spondylolisthesis at L5-S1 on or about March 18, 2008. He stated that she had completely recovered from any aggravation and had no permanent residuals. Dr. Lee noted that appellant had a normal objective examination. He stated that a magnetic resonance imaging (MRI) scan demonstrated a remote *pars* interarticularis defect at L5-S1 with associated grade 1 spondylolisthesis; but this condition was a developmental one and not related to any sort of traumatic event. Dr. Lee noted that there were essentially two etiologies to spondylolisthesis and *pars* defects, the most common being the development of this condition early in life without a specific traumatic event. He found this to be the case for appellant based on the initial March 19, 2008 diagnostic study. Dr. Lee noted that the second potential etiology for *pars*

interarticularis defects was a specific traumatic event; but such injuries were extremely rare and required a violent injury, such as high speed motor vehicle accidents or other serious high energy injury. He noted that the MRI scan would then show surrounding edema and classic findings for an acute injury which were not present in appellant's case. Based on her para interarticularis defects, appellant went on to develop degenerative disc disease at L5-S1 to a very mild degree. He noted that work activity was not going to change the natural history of appellant's lumbar spine simply because she had to do lifting. Dr. Lee opined that appellant had temporarily developed an aggravation of her preexisting condition, but her work did not permanently alter or change the course of the disease. He was in complete agreement with Dr. Sheridan's comment that appellant's accepted aggravation of degenerative disc disease at L5-S1 had resolved. He noted that appellant's preexisting degenerative disc disease would occasionally cause her symptoms that required treatment, but that her employment played no significant role whatsoever with respect to her need for any ongoing treatment. Dr. Lee noted that he would not place any restrictions or limitation on appellant based upon any injury she sustained to her lumbar spine at the workplace. He noted that there was a fairly remarkable discrepancy between her subjective complaints, objective findings and response to treatment.

On January 29, 2010 OWCP issued a notice of proposed termination of medical and wage-loss compensation benefits finding that the weight of the medical evidence established that appellant had no continuing disability from the work-related aggravation of her lumbar degenerative disc disease.

In a January 28, 2010 report, Dr. Heis restated his opinion that appellant did not improve after her facet joint injections, lumbar epidural steroid injections or medial branch blocks. Appellant continued to have low back complaints aggravated by her daily activities due to the L5-S1 spondylolisthesis. Dr. Heis disagreed with the impartial evaluation by Dr. Lee. He noted that Dr. William Tobler, a Board-certified neurosurgeon, recommended surgery to fuse the L5-S1 spine to treat her spondylolisthesis and he agreed with this recommendation. Dr. Heis reiterated that appellant should remain off work. On February 10, 2010 he indicated that appellant could return to work with light-duty restrictions of lifting no more than 20 pounds occasionally and 10 pounds frequently for the next three months.

By decision dated March 3, 2010, OWCP terminated appellant's wage-loss compensation and medical benefits effective March 14, 2010.

On March 22, 2010 appellant, through her attorney, requested a telephonic hearing before OWCP's hearing representative. In a March 1, 2010 report, Dr. Heis noted that appellant continued to experience severe pain. He released appellant to light-duty work in order to maintain her eligibility for health insurance pending her appeal. Dr. Heis stated that appellant could tolerate light-duty work. In an April 26, 2010 report, he supported surgery to stabilize her lumbar spine and stated that returning to work would make her pain worse until she underwent this procedure. Dr. Heis disagreed with Dr. Sheridan's conclusion that appellant's work-related condition had resolved since appellant continued to have pain at the L5-S1 level due to her spondylolisthesis caused by her degenerative disc disease, which he indicated was a work-related condition. He also disagreed with Dr. Lee. Although appellant's condition may have preexisted the onset of her pain, it was asymptomatic until her repetitive work activities made her back condition worse by aggravation. Dr. Heis further noted that appellant's work activities

contributed to arthritis and degeneration at the L5-S1 level due to her repetitive lifting. He noted that appellant's claim was allowed for aggravation of lumbar degenerative disc disease at the L5-S1 level, which became worse with her work activities and the normal aging process. Although Dr. Lee stated that appellant had resolution of her aggravation of degenerative disc disease; it was still present and had not improved. Dr. Heis reiterated that appellant needed a surgical fusion to resolve her pain.

At the hearing held on June 9, 2010, appellant's attorney argued that the reports of Dr. Lee and Dr. Sheridan should be rejected as they were defective and of no evidentiary value. Counsel argued that the opinion of Dr. Heis should be given weight as he was the treating physician and his opinion was very detailed.

By decision dated August 25, 2010, OWCP's hearing representative affirmed the March 3, 2010 decision terminating appellant's benefits.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. It may not terminate compensation without establishing that the disability ceased or was no longer related to the employment.² OWCP's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.³

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁴ 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.⁵

Section 8123(a) provides that, if there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.⁶ In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist 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.⁷

² *Elaine Sneed*, 56 ECAB 373 (2005); *Gloria J. Godfrey*, 52 ECAB 486 (2001); *see also C.B.*, Docket No. 10-1623 (issued April 11, 2011).

³ *Gewin C. Hawkins*, 52 ECAB 242 (2001).

⁴ *T.P.*, 58 ECAB 524 (2007); *Pamela K. Guesford*, 53 ECAB 727 (2002).

⁵ *Id.*

⁶ 5 U.S.C. § 8123(a).

⁷ *R.C.*, 58 ECAB 524 (2007); *Pamela K. Guesford*, *supra* note 4.

ANALYSIS

OWCP accepted that, as a result of her federal duties, appellant sustained an aggravation of her lumbar degenerative disc disease. It paid wage-loss compensation and medical benefits. OWCP may not terminate compensation without establishing that her disability ceased or was no longer related to her employment.⁸ It may not terminate medical benefits without showing that appellant no longer has residuals from the accepted injury that require further treatment.⁹

The Board finds that a conflict in medical opinion arose between Dr. Heis, appellant's treating physician, and Dr. Sheridan, the second opinion physician, with regard to whether she remained disabled and had residuals of the accepted employment injury. Dr. Heis found appellant disabled due to residuals of her work injury. He noted his agreement with Dr. Tobler that she would benefit from spinal fusion surgery. Dr. Sheridan opined that appellant's work-related back condition had resolved and that her current condition was due to the natural progression of the preexisting degenerative disease. He noted that her work aggravation was temporary and had ceased. In order to resolve the conflict, OWCP referred appellant to Dr. Lee for an impartial medical opinion, pursuant to 5 U.S.C. § 8123(a).

In a well-rationalized opinion, Dr. Lee noted that from a historical perspective, appellant sustained a temporary aggravation of grade 1 spondylolisthesis at L5-S1 on or about March 18, 2008, but that she had completely recovered from any aggravation and was now left with no permanent sequela. He noted that she had a normal objective examination. Dr. Lee noted that appellant's MRI scan did demonstrate a remote *pars* interarticularis defect at L5-S1 with associated grade 1 spondylolisthesis but stated that this condition was a developmental one and not related to any traumatic event. He explained his conclusion by noting that there were essentially two etiologies to spondylolisthesis and *pars* defects and that by far the most common is the development of this condition early in someone's life without any specific traumatic event, which he stated was obviously the case for appellant as her MRI scan noted changes that were remote and nothing acute. Dr. Lee indicated that the second potential etiology for *pars* interarticularis defects is a specific traumatic event, but that these changes were extremely rare and required an acute injury which was not present in his case. He explained that appellant's work history would not change the natural history of appellant's lumbar spine simply because she had to do lifting. Although Dr. Lee agreed that appellant had temporarily developed an aggravation of her preexisting condition, her work did not permanently change her condition and played no role with respect to her need for any ongoing treatment. He provided a well-rationalized opinion finding that appellant no longer had residuals as a result of his accepted work-related condition. As the case was referred to Dr. Lee as an impartial medical examiner to resolve the conflict in the medical evidence, his well-rationalized opinion represents the special weight of the medical evidence and the Board finds that OWCP properly terminated appellant's compensation benefits.¹⁰

⁸ *Mary A. Lowe*, 52 ECAB 223 (2001).

⁹ *T.P.*, *supra* note 4.

¹⁰ *R.C.*, *supra* note 7.

After OWCP terminated appellant's wage-loss compensation and medical benefits effective March 14, 2010, appellant submitted new medical evidence in the form of reports by Dr. Heis. In a March 1, 2010 report, Dr. Heis repeated his earlier conclusions but released appellant to return to light-duty work so that she could maintain her eligibility for health insurance. In his April 26, 2010 report, he noted that appellant's pain would not resolve until she undergoes surgery to stabilize her lumbar spine. Dr. Heis did not believe that appellant's work-related condition had resolved, noting that appellant continued to have pain at the L5-S1 level due to her spondylolisthesis caused by her degenerative disc disease at L5-S1 which was a work condition. He specifically opined that appellant's allowed diagnosis of aggravation of lumbar degenerative disc disease at L5-S1 was aggravated by her work activity. Dr. Heis noted that appellant was asymptomatic until her repetitive work activity at the employing establishment made her L5-S1 level worse. He stated that, although Dr. Lee indicated that appellant had resolution of her aggravation of degenerative disc disease at L5-S1, in reality the degenerative disc at L5-S1 was still present and not improved. Dr. Heis further indicated that the fact that appellant's treatments have not helped her evince a deep structural problem that will not resolve with temporary injections, medication or therapy.

The Board finds that the new medical evidence submitted by appellant is not sufficient to meet her burden of proof to show that she has continuing disability causally related to her work injury after March 14, 2011. Dr. Heis essentially reiterated his findings and conclusions that appellant's work-related injury had not resolved. As he had been on one side of the conflict in the medical opinion that the impartial specialist, Dr. Lee, resolved, his report is insufficient to overcome the weight accorded the impartial specialist or to create a new medical conflict absent any new findings and rationale in support of causal relationship.¹¹

CONCLUSION

The Board finds that OWCP properly terminated appellant's compensation and medical benefits effective March 14, 2010 as she had no further employment-related disability.

¹¹ *J.S.*, Docket No. 10-1829 (issued April 8, 2011); *E.J.*, Docket No. 10-1680 (issued April 6, 2011).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 25, 2010 is affirmed.

Issued: August 5, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board