

safety gate struck her on the head and neck. OWCP accepted contusions to the face, scalp and a neck and cervical strain. Appellant stopped work on August 15, 2008.

Appellant was treated by Dr. J. Abbott Byrd, III, a Board-certified orthopedic surgeon, from October 8, 2008 to January 26, 2009. Dr. Byrd diagnosed worsening cervical strain and mechanical neck pain superimposed upon preexisting degenerative changes at C5-6. He noted that an October 24, 2008 magnetic resonance imaging (MRI) scan of the cervical spine revealed a small left paracentral disc protrusion at C4-5 mildly deforming the left ventral cord, severe C5-6 spondylosis and disc space narrowing with severe left foraminal stenosis and a small right paracentral disc protrusion at C6-7 mildly deforming the right ventral cord. On January 7, 2009 Dr. Byrd noted appellant's continued neck pain with radiation into her right arm. He opined that her symptoms were due to the right C5-6 disc herniation which was causally related to the work injury. Dr. Byrd recommended a C5-6 and C6-7 anterior cervical discectomy and fusion and noted that appellant was disabled pending surgery.

On December 29, 2008 OWCP referred appellant to Dr. Steven C. Blasdell, a Board-certified orthopedics surgeon, for a second opinion. In a February 19, 2009 report, Dr. Blasdell reviewed the records and examined her. On examination, the neck revealed moderate paracervical muscle tightness and tenderness and restricted cervical flexion and extension. Dr. Blasdell diagnosed cervical spondylosis and C5-6 degenerative disc disease. He noted that Dr. Byrd's recommended discectomy was not medically necessary to correct the work injury and that appellant's current disability was not related to the accepted injury. Dr. Blasdell found that she recovered from the accepted conditions of cervical strain, head and neck contusions and required no further medical treatment. Appellant's current symptoms of pain related to her underlying and preexisting cervical degenerative condition. Dr. Blasdell advised that she could return to work with permanent neck restrictions which were related to her preexisting underlying cervical degenerative condition and unrelated to the August 15, 2008 work injury.

On April 2, 2009 OWCP issued a notice of proposed termination of compensation benefits on the grounds that Dr. Blasdell's report dated February 19, 2009 established no residuals of the accepted contusions of the face, scalp and neck or cervical strain.

Appellant submitted reports from Dr. Byrd dated April 8 and 22, 2009. Dr. Byrd disagreed with Dr. Blasdell and noted that appellant's neck and upper extremity pain were related to the August 15, 2008 work injury. He continued to recommend a C5-6 and C6-7 anterior cervical discectomy and fusion and noted the surgery was directly related to the August 15, 2008 work injury.

OWCP found a conflict of medical opinion arose between Dr. Byrd, appellant's treating physician, who supported ongoing residuals of appellant's work-related injuries and total disability, and Dr. Blasdell, an OWCP referral physician, who determined that appellant's work-related conditions had resolved and she could return to her preinjury position as a supply technician with restrictions related to the preexisting cervical degenerative condition.

On May 14, 2009 OWCP referred appellant to Dr. Felix M. Kirven, a Board-certified orthopedic surgeon selected as the impartial medical specialist. In a report dated May 27, 2009, Dr. Kirven reviewed the records provided and performed a physical examination. He reviewed

appellant's job requirements, noted a history of her work injury and reviewed treatment following the injury. On examination, the cervical spine revealed no spasm, lateral rotation of 75 degrees, extension of 60 degrees, pain with light finger touching, negative Spurling's maneuver and the axial compression test revealed neck pain which was an inappropriate illness behavior. The thoracic spine had normal thoracic kyphosis with no tenderness or spasm. There was normal strength of deltoids, biceps, triceps and wrist flexors and extensors. Lower extremity motor examination revealed no abnormalities at the hip, knee, ankle and plantar and intact sensation at C3-8, T1, L1-5 and S1 bilaterally and L1-5 and S1 bilaterally with normal reflexes of the upper and lower extremities. Based on the examination, Dr. Kirven noted that appellant had symptom magnification and functional overlay. The surgical procedures proposed by Dr. Byrd were not related to the August 15, 2008 work injury, rather they were related to degenerative changes. Dr. Kirven's examination revealed no physical findings to indicate work-related disability; rather appellant displayed symptom magnification. He noted that appellant had no residuals of the accepted cervical strain or contusions and that these conditions were resolved. Dr. Kirven reviewed appellant's job description and noted that she could return to work full duty without restrictions. Appellant's current medical condition was related to symptom magnification or inappropriate illness behavior that complicated her return to work. Dr. Kirven advised that work injury did not aggravate her preexisting degenerative condition. He opined that appellant reached maximum medical improvement and did not require additional treatment. Dr. Kirven also provided a July 7, 2009 work capacity evaluation which advised that appellant could return to her usual job with no limitations.

By decision dated July 15, 2009, OWCP terminated appellant's wage-loss compensation and medical benefits effective that day.

On August 13, 2009 appellant requested a telephonic oral hearing which was held on December 23, 2009. In reports dated January 7 to August 5, 2009, Dr. Byrd noted appellant's continued complaint of right upper extremity pain due to the C5-6 and C6-7 disc herniation and recommended an anterior cervical discectomy and fusion. He reviewed Dr. Kirven's report and reiterated his opinion that appellant's symptoms and need for surgery were directly related to her work injury. On August 7, 2009 Dr. Byrd performed an anterior cervical discectomy and fusion at C5-6 and C6-7 and diagnosed spondylosis at C5-6 with foraminal stenosis and right C6-7 disc herniation extruded. In reports dated August 24 to January 27, 2010, he noted that appellant was progressing well postoperatively with improved radicular pain. Dr. Byrd returned appellant to work light duty on November 16, 2009 and to full duty on January 4, 2010. In a January 27, 2010 report, Dr. Byrd opined that appellant sustained a right C6-7 disc herniation as well as a cervical contusion and mechanical pain in part due to the preexisting C5-6 degenerative changes which became symptomatic following her work injury of August 15, 2008. He opined that the work injury necessitated appellant's August 7, 2009 surgery.

In a decision dated March 15, 2010, the hearing representative affirmed the July 15, 2009 OWCP decision.

LEGAL PRECEDENT

Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation benefits.² 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.³ The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, OWCP must establish that a claimant no longer has residuals of an employment-related condition, which requires further medical treatment.⁴

ANALYSIS

OWCP accepted appellant's claim for work-related contusions of the face, scalp and neck and a cervical strain. It subsequently found a conflict in medical opinion. Appellant's attending physician, Dr. Byrd, a Board-certified orthopedic surgeon, supported ongoing residuals of her work-related injuries, the need for surgery and total disability. Dr. Blasdell, OWCP's referral physician, determined that appellant's work-related conditions had resolved, that she did not require surgery and had no residuals of the work injury. He found she could return to her supply technician position with restrictions based on her preexisting underlying cervical degenerative disease. Consequently, OWCP referred appellant to Dr. Kirven to resolve the conflict.

The Board finds that the opinion of Dr. Kirven is sufficiently well rationalized and based upon a proper factual background such that it is entitled to special weight and establishes that appellant's work-related contusion of the face, scalp and neck and cervical strain has ceased. Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.⁵

In a May 27, 2009 report, Dr. Kirven reviewed appellant's history, reported findings and noted that she exhibited no objective complaints or definite work-related abnormality in her condition. He found symptom magnification and functional overlay. Dr. Kirven further found that appellant did not exhibit any findings with regard to the accepted contusion of the face, scalp and neck and cervical strain. He found no evidence of cervical muscle spasms and noted normal range of motion, and normal strength and sensation. Dr. Kirven opined that appellant's accepted cervical strain and contusions of the face, scalp and neck were resolved. He reviewed her job description and noted that she could return to work full duty without restrictions. Dr. Kirven advised that the examination failed to reveal any objective findings to indicate that appellant had any disability present relating to the accepted contusion of the face, scalp and neck and cervical strain that would impede her ability to return to work as a full-duty mail processor without

² *Gewin C. Hawkins*, 52 ECAB 242 (2001); *Alice J. Tysinger*, 51 ECAB 638 (2000).

³ *Mary A. Lowe*, 52 ECAB 223 (2001).

⁴ *Id.*; *Leonard M. Burger*, 51 ECAB 369 (2000).

⁵ *Solomon Polen*, 51 ECAB 341 (2000). See 5 U.S.C. § 8123(a).

restrictions. He noted that her current medical condition was related to symptom magnification or inappropriate illness behavior which complicated her return to work. Dr. Kirven opined that appellant reached maximum medical improvement and did not require additional treatment or surgery.

The Board finds Dr. Kirven had full knowledge of the relevant facts and evaluated the course of appellant's condition. Dr. Kirven is a specialist in the appropriate field. At the time benefits were terminated he clearly opined that appellant had no work-related reason for disability and he found no evidence to support continuing residuals of the accepted conditions. Dr. Kirven's opinion as set forth in his report of May 27, 2009 is found to be probative evidence and reliable. The Board finds that his opinion constitutes the weight of the medical evidence and is sufficient to justify the Office's termination of benefits for the accepted conditions of contusion of the face, scalp and neck and cervical strain.

After Dr. Kirven's examination, appellant submitted reports from Dr. Byrd dated January 7, 2009 to January 27, 2010, who continued to recommend an anterior cervical discectomy and fusion at C5-6 and C6-7. Dr. Byrd noted that his opinion differed from Dr. Kirven as he believed appellant's symptoms and need for surgery were directly related to her work injury. Similarly, in reports dated August 24, 2009 to January 27, 2010, he noted that appellant was progressing well after an August 7, 2009 surgery and returned appellant to work light duty on November 16, 2009 and full duty on January 4, 2010. Although Dr. Byrd supported that appellant continuing symptoms and need for surgery were due to appellant's work injury, his opinion on causal relationship was conclusory without any additional rationale.⁶ He, as noted above, was on one side of a conflict that was resolved by Dr. Kirven. The Board has held that reports from a physician who was on one side of a medical conflict that an impartial specialist resolved, are generally insufficient to overcome the weight accorded to the report of the impartial medical examiner, or to create a new conflict.⁷ Thus, Dr. Byrd's reports are insufficient to overcome those of Dr. Kirven or to create a new conflict in the medical evidence.

On appeal, appellant asserts that Dr. Kirven was insufficient to establish that appellant's accepted conditions had resolved and that OWCP should have accepted additional conditions. As explained, Dr. Kirven resolved the medical conflict and Dr. Byrd's additional reports were not sufficient to create a new conflict. The Board also notes that OWCP's March 15, 2010 decision did not specifically adjudicate whether appellant had additional conditions causally related to her August 15, 2008 work injury. Consequently, the Board does not have jurisdiction over this matter.⁸

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.

⁶ See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

⁷ *I.J.*, 59 ECAB 408 (Docket No. 07-2362, issued March 11, 2008). See *Dorothy Sidwell*, 41 ECAB 857 (1990).

⁸ See 20 C.F.R. § 501.2(c).

CONCLUSION

The Board finds that OWCP has met its burden of proof to terminate compensation benefits effective July 15, 2009 and that appellant failed to establish that she had any continuing disability due to his accepted condition after July 15, 2009.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 15, 2010 is affirmed.

Issued: July 20, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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