

FACTUAL HISTORY

On October 15, 2008 appellant, then a 41-year-old letter carrier, filed a recurrence of disability claim in File No. xxxxxx942 alleging that he experienced low back and right leg numbness due to prolonged walking and standing. On November 25, 2008 OWCP determined that he had a new occupational disease and accepted his claim for lumbar intervertebral disc without myelopathy and sprain of the back and lumbar region. Appellant stopped work on September 19, 2008 and returned to part-time light duty on October 2, 2008 and full-time limited duty on January 9, 2009.²

Appellant was treated by Dr. Zhao M. Huang, a Board-certified physiatrist. In a June 10, 2008 report, Dr. Huang advised that appellant had a work-related injury in April 2008. He noted diagnoses that included lumbar sprain and opined that appellant was totally disabled from his work injury. In reports dated March 5 to October 1, 2009, Dr. Huang noted positive findings upon examination and diagnosed lumbar sprain and strain with discogenic lower back pain, right lumbar L4-5 radiculopathy and right sacroiliac joint dysfunction. He recommended physical therapy and opined that appellant was partially disabled. In an October 27, 2009 duty status report, Dr. Huang returned appellant to full-time work with restrictions.

On January 12, 2010 OWCP referred appellant to Dr. Sanford R. Wert, a Board-certified orthopedist, for a second opinion. In an February 5, 2010 report, Dr. Wert noted that the examination revealed a normal gait, no tenderness or muscle spasm of the lumbar spine, limited range of motion of the lumbar spine, negative straight leg raises, no atrophy, reflexes were equal and symmetrical bilaterally and normal muscle testing in the upper and lower extremities. He diagnosed aggravation of preexisting injury of the lumbar spine and sprain/strain of the lumbosacral spine. Dr. Wert opined that appellant sustained a temporary aggravation of the preexisting lumbar spine injury which resolved. He noted that appellant was able to work full duty as a letter carrier without restrictions. In a work capacity evaluation Dr. Wert opined that appellant could return to his date-of-injury position without restrictions.

Appellant submitted a March 30, 2010 report from Dr. Huang who noted findings of tenderness between L4-5 and L5-S1, limited range of motion, positive leg raises on the right side and decreased muscle strength with intact sensory testing. Dr. Huang diagnosed lumbar sprain and strain with discogenic lower back pain, right lumbar L4-5 radiculopathy and right sacroiliac joint dysfunction. He recommended physical therapy and opined that appellant was temporarily and partially disabled.

On April 16, 2010 OWCP requested that Dr. Wert provide clarification of his report, asking that he address whether appellant had any residuals of his condition. In an April 26, 2010 report, Dr. Wert noted that appellant had sustained a temporary aggravation of the preexisting lumbar spine injury. He opined that there were no disabling residuals of the accepted conditions present as the examination revealed no abnormalities.

² Appellant filed a claim for an injury sustained on April 2, 2008, which was accepted for sprain of the back, lumbar region, File No. xxxxxx942 and a claim for an injury sustained on November 1, 2010 which was accepted for lumbar sprain and lumbar radiculopathy at L4, L5, File No. xxxxxx616. On February 1, 2011 OWCP combined claim File Nos. xxxxxx616, xxxxxx942 and xxxxxx911.

Appellant continued to submit reports from Dr. Huang dated July 6 and October 7, 2010, who noted findings of tenderness between L4-5 and L5-S1 spinous process and the bilateral lumbosacral paraspinal muscles, limited range of motion, positive leg raises on the right side and decreased muscle strength. Dr. Huang diagnosed lumbar sprain and strain with discogenic lower back pain, right lumbar L4-5 radiculopathy and right sacroiliac joint dysfunction. He opined that appellant was temporarily and partially disabled.

OWCP found that a conflict of medical opinion existed between Dr. Huang, who indicated that appellant sustained residuals of his work-related injuries and was partially disabled and Dr. Wert, who determined that appellant's accepted conditions had resolved and he could return to work without restrictions related to his accepted injuries.

To resolve the conflict, on October 26, 2010, OWCP referred appellant to Dr. Jerrold M. Gorski, a Board-certified orthopedist. In a November 15, 2010 report, Dr. Gorski noted reviewing the record, including the history of appellant's work injury and examining appellant. Examination revealed ambulation without difficulty, negative straight leg raising, negative Lasegue's maneuver, pain with range of motion of the lumbar spine and increased numbness in the right leg. Dr. Gorski noted findings of symptom magnification. He opined that appellant sustained a temporary mild disability as a result of his accepted work injuries which had completely resolved. Dr. Gorski opined that appellant's work-related injuries ceased and that he would return to his preinjury status in four to six weeks and then return to work full-time regular duty. He advised that appellant did not require additional physical therapy. In a work capacity evaluation Dr. Gorski noted that appellant could return to work part time, four hours per day with restrictions for one month.

Appellant submitted reports from Dr. Huang dated October 7 to November 1, 2010 who noted positive findings upon examination and diagnosed lumbar sprain and strain with discogenic lower back pain, right lumbar L4-5 radiculopathy and right sacroiliac joint dysfunction. Dr. Huang recommended physical therapy and opined that appellant was partially disabled. In a November 1, 2010 duty status report, he noted that appellant was totally disabled. Also submitted was a November 15, 2010 report from Dr. Yuanze Hong, a Board-certified physiatrist, who noted that appellant reported improved low back pain and radicular pain. He noted positive findings upon examination and diagnosed acute aggravation of lower back pain secondary to lumbar sprain/strain with discogenic low back pain, right lumbar L4, L5 radiculopathy and right sacroiliac joint dysfunction. Dr. Hong opined that appellant was totally disabled.

On January 25, 2011 OWCP requested Dr. Gorski to clarify his opinion and requested that he address whether appellant was at maximum medical improvement and if he could return to his date-of-injury position. In February 8, 2011 report, Dr. Gorski noted reexamining appellant who complained of right lower back pain. Appellant declined to perform a squat for fear of injuring his back although visual inspection of the back was unrevealing and examination was essentially normal. Dr. Gorski noted findings of a normal gait, normal straight leg raises bilaterally, no sensory deficits in the lower extremity and symptomatic overlay with magnification. He opined that appellant reached maximum improvement, that he had been working five hours daily but could advance to full-time, full-duty work with restrictions on excessive lifting. Dr. Gorski opined that appellant seemed to have a low threshold for

symptomatology but that his mild partial disability had resolved and that he could work full-time full duty. He advised that appellant needed no further orthopedic attention or physical therapy. In an accompanying February 8, 2011 work capacity evaluation, Dr. Gorski opined that appellant could perform his usual job and had no restrictions.

Appellant submitted a December 31, 2010 report from Dr. Tsai C. Chao, a Board-certified physiatrist, who noted positive findings upon examination and diagnosed acute aggravation of lower back pain secondary to lumbar sprain with discogenic lower back pain, right lumbar L4-5 radiculopathy and right sacroiliac joint dysfunction. Dr. Chao recommended physical therapy and opined that appellant was temporarily and partially disabled.

On February 18, 2011 OWCP issued a notice of proposed termination of compensation and medical benefits based on Dr. Gorski's reports.

Appellant submitted a February 25, 2011 statement and asserted that Dr. Gorski did not treat him fairly during the examination and that there was a language barrier because English was his second language. He requested another examination with a physician who spoke Cantonese or with a translator present. Appellant submitted a February 22, 2011 report from Dr. Huang who noted positive findings upon examination and diagnosed aggravation of lower back pain secondary to lumbar sprain and strain with discogenic lower back pain, right lumbar L4-5 radiculopathy and right sacroiliac joint dysfunction. Dr. Huang recommended physical therapy and opined that appellant was partially disabled.

In a March 21, 2011 decision, OWCP terminated appellant's compensation and medical benefits effective the same day, finding that Dr. Gorski's reports represented the weight of the medical evidence and established that appellant had no continuing residuals of his accepted injuries.

On April 16, 2011 appellant requested an oral hearing which was held on August 2, 2011. He submitted a January 29, 2011 duty status report from Dr. Huang who diagnosed aggravated lumbar sprain, discogenic disease and opined that appellant could return to work part time with restrictions. In an April 23, 2011 report, Dr. Huang noted positive findings upon examination and diagnosed aggravation of lower back pain secondary to lumbar sprain and strain with discogenic lower back pain, right lumbar L4-5 radiculopathy and right sacroiliac joint dysfunction. He recommended physical therapy and opined that appellant was partially disabled. An April 20, 2011 magnetic resonance imaging (MRI) scan of the lumbar spine revealed lateral disc herniation at L2-3, diffuse disc bulge and lateral herniation at L4-5 and a central annular tear and disc herniation at L5-S1.

The employing establishment submitted a statement from a health and resource management specialist who noted that appellant attended two examinations with Dr. Gorski and did not report a language problem until he received a notice of proposed termination. She noted that appellant's preemployment file showed that his basic English competence was good. Also submitted was a statement from Bob Denaro, supervisor of customer service, who supervised appellant for over seven years and was unaware of appellant's communication barrier and noted that he understood instructions and completed tasks assigned without question.

In a decision dated September 14, 2011, an OWCP hearing representative affirmed the March 21, 2011 decision.

On February 22, 2012 appellant requested reconsideration. In a January 9, 2012 letter, appellant through his union representative, advised that he experienced communication difficulties with management and he filed grievances. He submitted a January 16, 2012 statement from his wife who indicated that she served as translator for him when communicating with the case manager. Appellant submitted statements dated February 16 and 21, 2006, which asserted that he was required to finish his work assignment under unreasonable time constraints and was fearful of losing his job. In a February 22, 2012 statement, appellant asserted that he had a language barrier when being examined by Dr. Gorski and had difficulty articulating and understanding questions.

In a decision dated May 22, 2012, OWCP denied modification of the prior decision.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation 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 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.⁵

ANALYSIS -- ISSUE 1

OWCP accepted appellant's claim for work-related sprain of the back and lumbar region, lumbar radiculopathy at L4-5 and lumbar intervertebral disc without myelopathy. Appellant stopped work on September 19, 2008 and returned to part-time light duty on October 2, 2008 and full-time limited duty on January 9, 2009.

OWCP determined that a medical conflict existed between appellant's attending physician, Dr. Huang, who indicated that appellant sustained residuals of his work-related injuries and was disabled from work and Dr. Wert, who determined that appellant's accepted conditions had resolved and he could return to work without restrictions related to his accepted injuries. Consequently, OWCP referred appellant to Dr. Gorski to resolve the conflict.

The Board finds that the opinion of Dr. Gorski is sufficiently well rationalized and based upon a proper factual background such that it is entitled to special weight and establishes that residuals of appellant's work-related conditions have ceased. Where there exists a conflict of

³ *Gewin C. Hawkins*, 52 ECAB 242 (2001); *Alice J. Tysinger*, 51 ECAB 638 (2000).

⁴ *Mary A. Lowe*, 52 ECAB 223 (2001).

⁵ *Id.*; *Leonard M. Burger*, 51 ECAB 369 (2000).

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.⁶

In a November 15, 2010 report, Dr. Gorski reviewed appellant's history, reported findings and noted that appellant exhibited no objective complaints or findings due to the accepted conditions. He opined that the physical examination was normal and appellant did not have residuals of the accepted work-related condition of sprain of the back and lumbar region, lumbar radiculopathy at L4-5 and lumbar intervertebral disc without myelopathy. In view of the normal findings, Dr. Gorski opined that appellant magnified his symptoms. He opined that appellant sustained a temporary mild disability as a result of his accepted work injuries which completely resolved and he could return to full-time, full-duty work. Dr. Gorski advised that appellant did not require additional physical therapy. In a February 8, 2011 supplemental report,⁷ he noted reexamining appellant and noted findings of symptomatic overly with magnification. Dr. Gorski opined that appellant reached maximum improvement and his temporary disability resolved and noted that he could return to full-time, full duty and no longer needed orthopedic treatment or physical therapy. He found no basis on which to attribute any continuing condition to appellant's employment.

The Board finds that Dr. Gorski had full knowledge of the relevant facts and evaluated the course of appellant's condition. He is a specialist in the appropriate field. At the time wage-loss benefits were terminated Dr. Gorski clearly opined that appellant had no work-related reason for disability. His opinion as set forth in his reports of November 15, 2010 and February 8, 2011 is probative evidence and reliable. The Board finds that Dr. Gorski's opinion constitutes the weight of the medical evidence and is sufficient to justify OWCP's termination of wage-loss and medical benefits for the accepted conditions.

After Dr. Gorski's examination appellant submitted reports from Dr. Huang dated October 7, 2010 to February 22, 2011 who noted findings on examination, diagnoses and appellant's disability status. Similarly, on November 15, 2010 appellant was treated by Dr. Hong who noted diagnoses and appellant's disability status. Likewise, on December 31, 2010 Dr. Chao diagnosed acute aggravation of lower back pain secondary to lumbar sprain with discogenic lower back pain, right lumbar L4-5 radiculopathy and right sacroiliac joint dysfunction. Dr. Huang opined that appellant was partially disabled. However, Drs. Huang, Hong and Chao did not specifically address how any accepted conditions remained symptomatic and caused continuing disability. The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.⁸ The Board also notes that OWCP

⁶ *Solomon Polen*, 51 ECAB 341 (2000). See 5 U.S.C. § 8123(a).

⁷ See *Guiseppe Aversa*, 55 ECAB 164 (2003) (where OWCP secures an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the opinion from such specialist requires clarification or elaboration, OWCP has the responsibility to secure a supplemental report from the specialist for the purpose of correcting the defect in the original opinion).

⁸ *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

did not accept sacroiliac joint dysfunction as being work related.⁹ Additionally, Dr. Huang's reports are similar to his prior reports and are insufficient to overcome that of Dr. Gorski or to create a new medical conflict.¹⁰

Consequently, the medical evidence submitted after Dr. Gorski's reports is insufficient to overcome his report or to create another conflict in the medical evidence. The Board finds that Dr. Gorski's opinion constitutes the weight of the medical evidence and is sufficient to justify OWCP's termination of appellant's compensation benefits.

Appellant asserted that there was a language barrier when being examined by Dr. Gorski. However, the record is void of any contemporaneous evidence that he had any difficulty communicating with Dr. Gorski during his two examinations or with his own physician. There was no evidence of record that appellant requested assistance during the examinations or after the examinations. Rather, the record includes three letters submitted by him dated February 15 to 21, 2006, which demonstrate a clear understanding of the English language, a statement from a health and resource management specialist who noted that appellant's preemployment file showed that his basic English competence was good and a statement from appellant's supervisor of several years, Mr. Denaro, who noted that appellant understood instructions and completed tasks assigned without question.

LEGAL PRECEDENT -- ISSUE 2

As OWCP met its burden of proof to terminate appellant's compensation benefits, the burden shifted to appellant to establish that he had continuing disability causally related to his accepted employment injury.¹¹ To establish causal relationship between the claimed disability and the employment injury, appellant must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship.¹²

ANALYSIS -- ISSUE 2

The Board finds that appellant has not established that he has any continuing residuals of his work-related sprain of the back and lumbar region, lumbar radiculopathy at L4-5 and lumbar intervertebral disc without myelopathy, on or after March 21, 2011.

After the termination of benefits on March 21, 2011 appellant submitted a January 29, 2011 duty status report from Dr. Huang who made diagnoses and opined that appellant could return to work part time with restrictions. Similarly, in an April 23, 2011 report, Dr. Huang

⁹ See *Jaja K. Asaramo*, 55 ECAB 200 (2004) (for conditions not accepted or approved by OWCP, the claimant bears the burden of proof to establish that the condition is causally related to the employment injury).

¹⁰ See *Michael Hughes*, 52 ECAB 387 (2001); *Howard Y. Miyashiro*, 43 ECAB 1101, 1115 (1992); *Dorothy Sidwell*, 41 ECAB 857 (1990). The Board notes that Dr. Huang's reports do not contain new findings or rationale upon which a new conflict might be based.

¹¹ See *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004); *Manuel Gill*, 52 ECAB 282 (2001).

¹² *Daniel F. O'Donnell, Jr.*, 54 ECAB 456 (2003).

diagnosed aggravation of lower back pain secondary to lumbar sprain and strain with discogenic lower back pain, right lumbar L4-5 radiculopathy and right sacroiliac joint dysfunction. He opined that appellant was temporarily and partially disabled. However, none of Dr. Huang's reports provide medical reasoning to explain how any continuing residual condition was causally related to the accepted work conditions. The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.¹³ Other reports, including the April 20, 2011 MRI scan of the lumbar spine, failed to provide an opinion on how any continuing residual condition was causally related to the accepted work conditions. For this reason, this evidence is not sufficient to meet appellant's burden of proof.

None of the reports submitted by appellant after the termination of benefits included a rationalized opinion regarding the causal relationship between his current condition and his accepted work-related conditions. Consequently, appellant did not establish that he had any employment-related condition or disability after March 21, 2011.

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 benefits effective March 21, 2011 and that appellant failed to establish that he had any continuing disability due to his accepted condition after March 21, 2011.

¹³ See *Jimmie H. Duckett*, *supra* note 8. The Board notes that Dr. Huang's reports do not contain new findings or rationale upon which a new conflict might be based; see *Michael Hughes*, *supra* note 10.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 22, 2012 is affirmed.

Issued: April 3, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board