United States Department of Labor
Employees' Compensation Appeals Board

D.C., Appellant	)	
and	)	**Docket No. 12-1921**
	)	**Issued: August 13, 2013**
U.S. POSTAL SERVICE, POST OFFICE, Alvin, TX, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 19, 2012 appellant filed a timely appeal from a June 12, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 compensation benefits on the grounds that she no longer had any residuals or disability causally related to her accepted cervical conditions.

FACTUAL HISTORY

On May 31, 2005 appellant, then a 41-year-old city carrier, lifted a tray of mail in her postal vehicle and alleged injury to her neck. OWCP accepted her claim for brachial neuritis and

[1] 5 U.S.C. § 8101 *et seq.*

radiculitis, displacement of a cervical intervertebral disc without myelopathy, lumbago and cervicalgia. Appellant stopped work on June 1, 2005.

Appellant was treated by Dr. Wanda P. Spuhler, a family practitioner, for her work-related injury and was held off work. On June 14, 2005 Dr. James Cain, a Board-certified diagnostic radiologist, reported that a magnetic resonance imaging (MRI) scan of the cervical spine revealed mild posterior protrusion indenting the sac at C2-3 and C3-4 with protrusions effacing the subarachnoid space at C4-5 and C5-6. He found no disc herniation, central canal stenosis or remarkable foraminal narrowing at C6-7 and C7-T1. The craniovertebral junction, cord and marrow signal were normal. An MRI scan of the thoracic spine showed no significant herniation, central canal stenosis or remarkable foraminal narrowing.

On July 16, 2005 appellant returned to part-time modified duty under restrictions set by Dr. Spuhler. On September 12, 2005 she underwent a cervical epidural steroid injection by Dr. Eduardo A. Garcia, Board-certified in pain medicine. Appellant returned to duty full time and filed claims for intermittent periods of disability related to her accepted cervical condition.[2] She was followed by Dr. Garcia for treatment of C5-6 spondylosis with left side C6 radiculitis. Appellant underwent additional epidural steroid injections on April 13, 2007 and April 15, 2008.

The record reflects that appellant stopped work on or about April 21, 2009 and received compensation for total disability. She underwent a cervical MRI scan on June 6, 2008. Dr. Elizabeth A. Jones, a Board-certified diagnostic radiologist, reported that the study revealed no fracture or lesion of the cervical discs, with partial dehydration and mild disc bulging at several levels, most notable at the C5-6 level, without frank impingement. She noted a mild hypertrophy present at several levels and the neural foramina remained patent.

In a June 29, 2009 report, Dr. Spuhler stated that appellant was seen for C5-6 radicular symptoms related to the May 31, 2005 injury. She advised that appellant sustained a recurrence of disability in April 2009 due to a change in her duty status. Appellant still experienced radiating pain and numbness down her left arm with muscle spasm and limited range of motion. She had physical therapy since June 1, 2009 without relief. Dr. Spuhler recommended another six weeks of physical therapy and then a new electromyogram (EMG) study. She held appellant off work pending new test results and reevaluation.

OWCP referred appellant, a statement of accepted facts and a list of questions, to Dr. Robert A. Fulford, a Board-certified orthopedic surgeon, for a second opinion examination. In a September 24, 2009 report, Dr. Fulford reviewed the history of injury and medical treatment. On examination, he noted mild restriction of motion in the cervical spine with no palpation of spasm. There was tenderness and crepitus over the superior medial angle of the left scapula and pain-free full range of motion of both shoulders. The thenar, hypothenar eminence and intrinsics were full and normal. Sensory examination was decreased at the left C5-6 and left C8. Dr. Fulford diagnosed degenerative cervical and lumbar disc disease. In answer to the listed questions, he stated that appellant demonstrated no residuals, either in the cervical or lumbar spine, of her May 31, 2005 or November 25, 2006 injuries. Dr. Fulford stated that the June 14,

[2] The record reflects that appellant sustained a lumbar spine injury on November 25, 2006 under file number xxxxxx625. OWCP doubled the case records under master file number xxxxxx306. As the termination decisions on appeal do not address appellant's lumbar condition, it is not an issue in the present appeal. *See* 20 C.F.R. § 501.2(c).

2005 MRI scan showed no significant herniation in the thoracic area and a protrusion in the cervical spine. A June 29, 2005 EMG study was not positive for radiculopathy because it did not show any positive sharp waves, fasciculation or fibrillations. Dr. Fulford found that appellant reached maximum medical improvement for her cervical spine injury on July 26, 2005 and January 20, 2007 for her lumbar spine injury. He concluded that she could return to full, unrestricted duty as a city carrier. In a work capacity form (OWCP-5c), Dr. Fulford reported that appellant had reached maximum medical improvement and was capable of performing her usual job with no restrictions.

OWCP referred a copy of Dr. Fulford's report to Dr. Spuhler for review and comment. In an October 28, 2009 report, Dr. Spuhler stated her disagreement with Dr. Fulford. She noted treating appellant since November 2005 for complaints of ongoing frequent C5-6 radiculitis, radiating pain in the neck, left shoulder and arm with swelling in the C5-6 disc area. This affected appellant's normal activities, causing her to be off work due to a recurrence of her symptoms. Dr. Spuhler diagnosed acute chronic brachial neuritis and radiculitis, cervical disc displacement and cervicalgia. She found that appellant had residuals of her work-related condition and chronic symptoms of cervical radiculitis which restricted her work capacity and ability to perform the repetitive physical demands of a city carrier position. Dr. Spuhler concluded that appellant had reached maximum medical improvement and was not capable of returning to work due to the chronic nature of her radicular complaints. She recommended light duty with no heavy lifting, twisting reaching or turning of the head. In a work capacity evaluation, Dr. Spuhler stated that appellant could not work more than two hours a day, three days a week.

OWCP found a conflict in medical opinion between Dr. Spuhler, for appellant, and Dr. Fulford, the second opinion physician, as to the nature and extent of appellant's ongoing residuals and capacity for work. It referred appellant, together with a statement of accepted facts, to Dr. Frank L. Barnes, a Board-certified orthopedic surgeon, for an impartial medical examination. In a February 18, 2010 report, Dr. Barnes reviewed the history of injury and medical treatment. He noted that appellant's chief complaint was of pain in the region of the left neck, shoulder and lumbar spine. Dr. Barnes stated that the June 29, 2005 EMG show mild chronic left C5 reinnervation with no active denervation which, in all medical probability, were present before the May 31, 2005 injury. On examination, the cervical spine showed normal curvature without list or atrophy, no swelling or spasm. There was tenderness reported over the left scapula and left side of the neck. Dr. Barnes noted weakness in triceps reflexes, radial reflexes and no atrophy of the upper extremities. He diagnosed left shoulder strain syndrome with degenerative disc disease, probable preexisting EMG findings. Dr. Barnes further diagnosed lumbar pain syndrome and a shoulder sprain, probably resolved. He opined that appellant could return to her regular job duties because her physical examination did not reveal neurologic losses, weakness, atrophy or objective findings to establish that she was incapable of performing her duties. Dr. Barnes recommended no further medical treatment and stated that maximum medical improvement had been reached.

On May 5, 2010 OWCP notified appellant that it proposed to terminate her wage-loss compensation and medical benefits based on the opinion of Dr. Barnes that she did not have any residuals or disability related to her accepted brachial neuritis and radiculitis, displaced cervical intervertebral disc without myelopathy, lumbago and cervicalgia. It provided her 30 days to submit additional information.

In statements dated May 11 and June 8, 2010, appellant contended that OWCP's referral physicians were not impartial and that her physician had recommended she not return to work due to her chronic symptoms and the repetitive nature of her duties.

In a May 20, 2010 report, Dr. Spuhler stated that appellant experienced frequent symptoms of radiating pain in the neck, left shoulder and arm which affected her daily activities. She stated that examination showed objective findings of tenderness to touch and swelling on the left side of the neck around the C5-6 area and left scapula. Dr. Spuhler noted limited range of motion in the neck and left arm as well as muscle spasms. She opined that the symptoms were related to the accepted acute chronic brachial neuritis and radiculitis. Dr. Spuhler reiterated that appellant could not return to full duty and would have permanent work restrictions.

By decision dated June 18, 2010, OWCP terminated appellant's compensation benefits effective July 4, 2010. It found that the weight of medical evidence rested with Dr. Barnes, the impartial specialist, who found that she did not have residuals or disability related to her May 31, 2007 injury.

On July 16, 2010 appellant requested an oral hearing before the Branch of Hearings and Review that was held on April 17, 2012. She contended that Dr. Barnes was not impartial because he was selected by the Department of Labor. Appellant argued that he failed to conduct a thorough examination and did not ask her any questions. She noted that Dr. Spuhler had treated her since 2005 for continued symptoms related to her accepted injury. Appellant had recently been treated at a local emergency room for atypical chest pain which was determined to be related to her cervical condition. She continued to experience cervical pain and stopped work in April 2009 because of her employment-related condition. Appellant was informed that the record would be held open for 30 days for the submission of additional evidence.

In a December 4, 2011 Emergency Department note, appellant was treated for atypical chest pain. A December 5, 2011 computerized tomography (CT) scan of the chest, by Dr. Gregory K. Houston, a Board-certified diagnostic radiologist, found no evidence of pulmonary embolus or significant abnormalities of the chest wall. Dr. Houston concluded that there were no significant abnormalities of the chest.

In work capacity evaluation forms dated January 16 and May 9, 2012, Dr. Spuhler reported that appellant experienced recurring effects of her injury with radiating pain and extreme swelling in the upper body. She provided permanent work restrictions of no more than two hours a day and recommended an MRI scan and more testing.

By decision dated June 12, 2012, OWCP affirmed the June 18, 2010 decision terminating benefits. OWCP's hearing representative noted that the weight of the medical evidence rested with the impartial opinion of Dr. Barnes. The hearing representative found that the additional reports from Dr. Spuhler did not establish that appellant's symptoms were related to the May 31, 2005 injury.

LEGAL PRECEDENT

Once OWCP accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify 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] Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.[5] 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.[6]

When there are opposing reports of virtually equal weight and rationale, the case will be referred to an impartial medical specialist pursuant to section 8123(a) of FECA which provides that, if there is 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 and resolve the conflict of medical evidence.[7] This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.[8]

In situations where there are 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 on a proper factual background, must be given special weight.[9]

ANALYSIS

OWCP accepted that appellant sustained brachial neuritis and radiculitis, displacement of a cervical intervertebral disc without myelopathy, lumbago and cervicalgia due to the May 31, 2005 employment injury. The issue is whether it properly terminated her compensation benefits effective July 4, 2010 for her accepted cervical conditions. The Board finds that OWCP properly terminated appellant's benefits as of that date.

Appellant was treated by Dr. Spuhler for her accepted cervical conditions. She was returned to modified duty following the May 31, 2005 injury and worked through April 21, 2009, when she stopped work. Dr. Spuhler provided reports in which she advised that appellant was totally disabled due to ongoing C5-6 radiculopathy into the left upper extremity.

---

[3] *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

[4] *Id.*

[5] *Furman G. Peake*, 41 ECAB 361, 364 (1990).

[6] *Id.*

[7] 5 U.S.C. §§ 8101-8193, 8123; *M.S.*, 58 ECAB 328 (2007); *B.C.*, 58 ECAB 111 (2006).

[8] *R.C.*, 58 ECAB 238 (2006).

[9] *Nathan L. Harrell*, 41 ECAB 401, 407 (1990).

In a September 24, 2009 report, Dr. Fulford, a second opinion physician, provided findings on examination and review of the medical record. He found that appellant had no cervical residuals related to her May 31, 2005 injury. Dr. Fulford stated that the June 14, 2005 MRI scan showed no significant herniation in the thoracic area and a mild protrusion in the cervical spine. He diagnosed degenerative cervical disc disease and advised that appellant reached maximum medical improvement regarding her cervical spine injury on July 26, 2005 and did not have any residuals. Dr. Fulford concluded that she could return to full duty without work restrictions.

On October 28, 2009 Dr. Spuhler stated her disagreement with the opinion of Dr. Fulford. She diagnosed acute chronic brachial neuritis and radiculitis, cervical disc displacement and cervicalgia due to the accepted injury of May 31, 2005. Dr. Spuhler stated that examination of appellant revealed residuals of her work-related conditions and chronic symptoms of cervical radiculitis which restricted her work capacity and ability to perform the repetitive demands of a city carrier. She concluded that appellant had reached maximum medical improvement but was not capable of returning to work for more than two hours a day, three times a week, with restrictions.

OWCP properly found a conflict of medical opinion between Dr. Spuhler and Dr. Fulford regarding whether appellant's accepted cervical conditions had resolved and her capacity for work. It referred appellant to Dr. Barnes for an impartial medical examination pursuant to 5 U.S.C. § 8123(a).

In a February 18, 2010 report, Dr. Barnes provided an accurate history of appellant's May 31, 2005 injury when she felt a pop in her left shoulder while moving mail trays in her postal vehicle. He noted the medical treatment by Dr. Spuhler and diagnostic studies which showed mild chronic left C6 reinnervation, which he advised was present prior to May 31, 2005. An MRI scan showed central disc cervical bulging. Appellant received treatment for her neck and left shoulder, including left trigger point injections by Dr. Garcia. Dr. Barnes noted that Dr. Garcia reported that the injection relieved her symptoms for awhile, which indicated that the problem was in the muscle of her scapular region rather than coming from her nervous system. Appellant continued with physical therapy and worked limited duty. Dr. Barnes noted that muscle testing in the upper extremities was normal. He listed findings on shoulder ranges of motion, noting there was no visible atrophy or winging of the scapula. No crepitation was found. Cervical curvature was normal without list or atrophy, no swelling and no spasm. Axial compression was normal. Dr. Barnes diagnosed a left shoulder strain syndrome with degenerative disc disease, with probable preexisting EMG findings. He noted that any shoulder sprain had resolved. Dr. Barnes stated agreement with the findings of Dr. Fulford, noting that examination of appellant did not reveal any neurological losses, weakness, atrophy or objective findings to establish that she could not return to her job. He stated that all reasonable medical treatment had been exhausted and recommended no further treatment. Dr. Barnes enclosed a work restriction evaluation, noting that appellant could perform her usual job full time without restriction.

The Board finds that the opinion of Dr. Barnes is well rationalized and based upon a proper factual background such that it is entitled to special weight. It establishes that appellant's work-related cervical conditions ceased without disabling residuals and that she could return to her regular full-time employment as a letter carrier. 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 is entitled to special weight when sufficiently well rationalized and based upon a proper factual background.[10]

The Board finds that the opinion of Dr. Barnes has probative value and convincing quality with respect to the physician's conclusions regarding the issue in this case. Dr. Barnes' opinion was based on a proper factual and medical history, a thorough review of the factual and medical history and an accurate summary of the relevant medical evidence that gave rise to the conflict.[11] He provided medical rationale for his opinion by explaining that the physical examination did not reveal neurologic losses, weakness, atrophy or objective findings to support that appellant was disabled from performing her regular duties. Dr. Barnes' opinion is entitled to special weight as the impartial medical examiner.

Subsequent to Dr. Barnes' report, appellant submitted a May 20, 2010 medical report from Dr. Spuhler, who reiterated her opinion that appellant experienced frequent symptoms of radiating pain in the neck, left shoulder and left arm. Dr. Spuhler stated that physical examination showed objective findings of tenderness to touch and swelling on the left side of the neck around the C5-6 area and left scapula. She noted limited range of motion in the neck and left arm, as well as muscle spasms in that area. Dr. Spuhler opined that the symptoms were related to the accepted acute chronic brachial neuritis and radiculitis, cervical disc displacement and cervicalgia. She stated that appellant could not return to full duty and would have permanent work restrictions. The Board notes that Dr. Spuhler's medical report repeated the findings and opinion expressed in her October 28, 2009 report that gave rise to the conflict in medical opinion. While Dr. Spuhler generally supported that appellant has continuing symptoms of her accepted cervical injury; her opinion on causal relationship is outweighed by the special weight accorded to Dr. Barnes as the impartial medical specialist. She provided no additional explanation as to how the accepted conditions remained symptomatic or caused disability for work.[12] Dr. Spuhler was on one side of the conflict that gave rise to the referral to Dr. Barnes.[13] Her reports are insufficient to overcome the special weight accorded Dr. Barnes or to create a new conflict of medical opinion.[14]

On appeal, appellant contends that Dr. Barnes conducted only a five-minute examination and was biased because his fees were paid by OWCP. As noted, when a conflict exists in medical opinion, OWCP is required by statute to refer her for an impartial medical examination. Appellant has not submitted any evidence to establish that Dr. Barnes conducted an improper physical evaluation or that he was biased in his consideration of the case.[15] The Board finds that

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

[11] *See Melvina Jackson*, 38 ECAB 443 (1987).

[12] *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).

[13] *C.B.*, Docket No. 12-1572 (issued February 21, 2013).

[14] *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. Hoover's report did not contain new findings or rationale on causal relationship upon which a new conflict might be based.

[15] *T.P.*, Docket No. 12-1192 (issued March 13, 2013).

Dr. Barnes' opinion constitutes the special weight of medical evidence. OWCP properly relied on his report to terminate appellant's compensation benefits for her cervical conditions.[16]

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's compensation benefits effective July 4, 2010 related to her accepted cervical conditions.

ORDER

IT IS HEREBY ORDERED THAT the June 12, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 13, 2013
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

[16] *D.M.*, Docket No. 11-386 (issued February 2, 2012); *Marshall E. White*, 33 ECAB 1666 (1982).