United States Department of Labor
Employees' Compensation Appeals Board

B.C., Appellant	)	
and	)	**Docket No. 12-1742**
	)	**Issued: February 6, 2013**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS HEALTH ADMINISTRATION SOUTHERN NEW HEALTH CARE SYSTEM, North Las Vegas, NV, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 9, 2012 appellant filed a timely appeal from a June 29, 2012 decision of the Office of Workers' Compensation Programs (OWCP) which affirmed the denial of compensation benefits. 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 the case.[2]

ISSUE

The issue is whether appellant established that she had any continuing disability or residuals related to her accepted conditions after March 9, 2010.

[1] 5 U.S.C. §§ 8101-8193.

[2] With her request for an appeal, appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c).

FACTUAL HISTORY

This case has previously been before the Board. In a November 24, 2006 decision, the Board found that OWCP did not meet its burden of proof to terminate appellant's compensation benefits as there was a conflict in the medical evidence.[3] In a November 23, 2011 decision, the Board found that OWCP met its burden of proof to terminate benefits effective March 9, 2010 based on the report of the referee physician who found that appellant had no residuals of her accepted lumbar strain, right rotator cuff condition.[4] The facts and circumstances of the case as set forth in the Board's prior decisions are incorporated herein by reference.

On December 20, 2011 appellant requested reconsideration. In statements dated March 12 to June 6, 2012, she asserted that she continued to have residuals of her accepted conditions and required surgery. Appellant submitted reports of diagnostic testing that included an electromyogram dated November 7, 2005. It was suggestive of a lesion causing bilateral L4, L5 and S1 sensory radiculopathy. An August 16, 2006 lumbar magnetic resonance imaging (MRI) scan revealed scoliotic curvature of the thoracolumbar spine, lateral disc protrusion at L2-3 and facet hypertrophy at L3-4, L4-5 and L5-S1. A December 14, 2011 MRI scan of the lumbar spine revealed L4-5 anterolisthesis with a broad-based disc bulge, facet arthropathy, central canal narrowing and foraminal narrowing, as compared to the previous study the condition has worsened, multilevel degenerative changes, disc bulges, facet arthropathy and scoliosis. A December 27, 2011 x-ray of the lumbar spine revealed scoliosis with mild disc disease and right abdominal calcification. Appellant also provided physical therapy records.

Appellant was treated by Dr. Samuel Bauzon, a Board-certified internist, on July 18, 2006 for right leg and hip pain after a fall at home on July 4, 2006. Dr. Bauzon noted that her history was significant for a work injury in February 2005 and a car accident in June 2005. He diagnosed benign essential hypertension, menopause, hypothyroidism and backache. In a January 17, 2012 report, Dr. Bauzon diagnosed history of back pain, insomnia, benign hypertension, chronic kidney disease, obesity, hypothyroidism, lumbago, bulging disc, lumbar radiculopathy at L3 and major depression.

Dr. Walter Kidwell, a Board-certified anesthesiologist, treated appellant from November 30, 2011 to February 1, 2012 for severe low back pain and right leg radicular pain.

[3] Docket No. 06-1249 (issued November 24, 2006).

[4] Docket No. 11-101 (issued November 23, 2011). OWCP accepted that on February 10, 2005 appellant, a health technician sustained a lumbar strain. Appellant stopped work on February 10, 2005 and did not return. On June 2, 2005 she was in a motor vehicle accident after undergoing authorized physical therapy for her accepted injury and had injuries to her shoulder and neck. Subsequently, OWCP accepted the June 2, 2005 motor vehicle injuries of the right shoulder and right rotator cuff repair on September 14, 2005 as consequential to the February 10, 2005 work injury. The referee physician, Dr. Anthony B. Serfustini, a Board-certified orthopedic surgeon, provided an April 28, 2009 report finding that appellant had no objective findings due to the accepted conditions. He opined that by October 2005 appellant had reached maximum medical improvement with regard to her February 10 and June 2, 2005 injuries and reverted back to her base line chronic lumbar pain syndrome. Dr. Serfustini noted nonindustrial diagnoses of degenerative disc disease at L4-5, degenerative facet disease at L4-5, L5-S1, chronic lumbar pain syndrome, morbid obesity, symptom-magnification, pain behavior, chronic anxiety syndrome and narcotic dependency. In a January 13, 2010 supplemental report, he opined that appellant did not have any residuals of her work injuries.

He diagnosed lumbar discopathy with radiculitis and radiculopathy and referred her to a surgeon. On February 1, 2012 appellant was treated by Dr. David Haas, a Board-certified orthopedic surgeon, who noted that she was three weeks postlumbar fusion and progressing well with reduced pain. Dr. Haas diagnosed low back pain radiating into the lower extremities and advised that he would see her back in three weeks.

Appellant provided treatment records from Dr. Reynold Rimoldi, a Board-certified orthopedic surgeon. On August 7, 2006 she reported that her symptoms began when she fell at work in February 2005 and were aggravated by a June 2005 automobile accident. Dr. Rimoldi noted that appellant was ambulating with a walker, had diffuse tenderness of the lumbar spine, limited range of motion, intact motor and sensory examination in the upper and lower extremities with diminished reflexes. He diagnosed chronic lumbar enthesopathy with mild degenerative spondylolisthesis at L4-5. Dr. Rimoldi recommended epidural injections. In reports dated January 9, 18 and 20, 2012, he noted that conservative treatment had failed and recommended surgery. On January 20, 2012 Dr. Rimoldi performed an L4, L5 laminotomy, bilateral L4, L5 nerve root foraminotomies, transforaminal lumbar interbody fusion, posterolateral fusion, bilateral L4 interior hemi-facetectomy and discectomy of the L4-5 with interbody fusion. He diagnosed spinal stenosis and instability secondary to degenerative L4-5 spondylolisthesis. On February 6, 2012 Dr. Rimoldi noted that appellant was doing satisfactorily after surgery.

In a decision dated June 29, 2012, OWCP denied modification of the prior decision.

LEGAL PRECEDENT

As OWCP met its burden of proof to terminate appellant's compensation benefits, the burden shifted to appellant to establish that she had continuing disability causally related to her accepted employment injury.[5] To establish causal relationship between the claimed disability and the employment injury, she must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship.[6]

ANALYSIS

The Board finds that appellant has not established continuing residuals of her work-related lumbar strain or right shoulder rotator cuff tear from the June 2, 2005 motor vehicle accident.

The Board's November 23, 2011 decision affirmed the termination of appellant's compensation benefits. Appellant requested reconsideration and submitted additional medical evidence. Reports from Dr. Rimoldi dated August 7, 2006 to February 6, 2012 noted treating appellant for lumbar spine pain radiating into both legs. These reports noted appellant's symptoms and diagnoses. On January 20, 2012 Dr. Rimoldi performed an L4-5 decompression and fusion. However, neither report provides medical reasoning to explain how any continuing residual condition was causally related to the February 10, 2005 work injury. The Board has

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

[6] *Daniel F. O'Donnell, Jr.*, 54 ECAB 456 (2003).

found that unrationalized medical opinions on causal relationship or of diminished probative value.[7] These reports are insufficient to meet appellant's burden of proof.

Dr. Bauzon's July 18, 2006 report predates the termination of benefits and his January 17, 2012, report does not address the cause of the diagnosed conditions. Similarly, on February 1, 2012 Dr. Haas diagnosed low back pain radiating into the lower extremities. Likewise, reports from Dr. Kidwell dated November 30, 2011 to February 1, 2012 diagnosed lumbar discopathy with radiculitis and radiculopathy.[8] However, these reports are insufficient to establish an ongoing work-related condition as none of the physicians provide medical reasoning to explain how any continuing condition was causally related to appellant's employment. Other medical reports, such as diagnostic test reports, are insufficient to establish a continuing work-related condition.[9] Therefore, these reports are insufficient to meet appellant's burden of proof.[10]

None of the reports submitted by appellant after the termination of benefits included a rationalized opinion regarding the causal relationship between her current condition and her employment injuries. Consequently, appellant did not establish that she had any employment-related condition or disability after March 9, 2010.

On appeal appellant asserted that she continued to have residuals of her accepted condition and was in constant pain. The Board notes that appellant failed to submit a report from a physician which provided a rationalized opinion relating appellant's current condition to the work-related injury.

Appellant may submit any 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 appellant failed to establish that she had any continuing disability due to her accepted condition after March 9, 2010.

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[7] *See Theron J. Barham*, 34 ECAB 1070 (1983).

[8] Dr. Kidwell submitted previous medical opinion which created the medical conflict that was resolved by Dr. Serfustini. *See supra* note 3. The Board has held that submitting a report from a physician who was on one side of a medical conflict that an impartial specialist resolved is, generally, insufficient to overcome the weight accorded to the report of the impartial medical examiner or to create a new conflict. *Jaja K. Asaramo*, 55 ECAB 200 (2004). The Board notes that Dr. Kidwell's reports did not contain new findings or rationale on causal relationship upon which a new conflict might be based.

[9] *See Asaramo*, *supra* note 8.

[10] Appellant also submitted physical therapy records. However, the Board has held that physical therapists are not competent to render a medical opinion under FECA. *See David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 29, 2012 is affirmed.

Issued: February 6, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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