

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On May 9, 1997 appellant, then a 34-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that she sustained a stomach injury as a result of heavy lifting on April 30, 1997 while in the performance of duty. The reverse of the claim form indicated that appellant was six months pregnant and did not stop work. OWCP accepted the claim for abdominal strain. Appellant subsequently returned to work in a light-duty position.

By letter dated August 24, 2009, the employing establishment advised appellant that it no longer had work available within appellant's work restrictions.³ The employing establishment stated that appellant would be placed in administrative leave status until September 11, 2009. Appellant submitted a claim for a recurrence of disability as of September 12, 2009.

In a report dated October 15, 2009, Dr. Gary Kelman, a Board-certified orthopedic surgeon, stated that appellant was seen for evaluation of her chronic low back pain and abdominal strain "dating to her work injury of [April 30, 1997]." Dr. Kelman indicated that appellant had been at maximum medical improvement since April 28, 1999 with permanent work restrictions per a functional capacity evaluation (FCE). He provided results on examination and indicated that appellant may work with permanent restrictions.

On February 12, 2010 OWCP accepted a recurrence of disability and appellant began receiving compensation for wage loss, effective November 10, 2009. OWCP referred appellant for a second opinion examination by Dr. Brad Cohen, a Board-certified orthopedic surgeon.

In a report dated June 14, 2010, Dr. Cohen provided a history and results on examination. He noted that appellant had undergone an FCE on May 21, 2010. Dr. Cohen stated that based on the history, physical examination, imaging studies and medical records, the abdominal strain had most likely resolved. Dr. Cohen noted that it would be quite unlikely for an abdominal strain to persist for this length of time. He indicated that a magnetic resonance imaging (MRI) scan had been requested, and if this was negative, he would conclude that there was no evidence the continuing complaints were related to the abdominal strain from the work injury. Dr. Cohen also noted that appellant's back complaints appeared to have started after the employment injury and were therefore not likely related to the April 30, 1997 employment injury.

In a report dated September 20, 2010, Dr. Cohen indicated that he had reviewed a September 10, 2010 MRI scan. Dr. Cohen opined that based on the MRI scan and other available evidence, "there is no evidence for continued residuals from the abdominal strain sustained as a result of the April 30, 1997 work-related injury. Her back pain, abdominal pain and left groin pain are therefore also unrelated to the April 30, 1997 work-related injury."

In a letter dated October 8, 2010, OWCP advised appellant that it proposed to terminate compensation for wage-loss and medical benefits. It found that Dr. Cohen represented the weight of the medical evidence, and if appellant disagreed she should submit evidence or argument within 30 days.

³ The letter refers to a Reassessment Team, and the letter was apparently issued pursuant to the National Reassessment Program (NRP).

By decision dated November 10, 2010, OWCP terminated compensation for wage-loss and medical benefits. It found the weight of the medical evidence rested with Dr. Cohen.

In a letter dated December 10, 2010, appellant requested a hearing before an OWCP hearing representative. She submitted a report dated October 28, 2010 from Dr. Kelman, who again indicated that she was treated for low back pain and abdominal strain dating back to an April 30, 1997 work injury. In an October 29, 2010 report, Dr. Kelman reiterated that appellant should continue working with restrictions from the 1999 FCE. A hearing was held on November 3, 2011.

By decision dated February 16, 2012, the hearing representative affirmed the November 10, 2010 termination decision. The hearing representative found that Dr. Cohen represented the weight of the medical evidence.

LEGAL PRECEDENT

Once OWCP has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.⁴ OWCP may not terminate compensation without establishing that disability ceased or that it was no longer related to the employment.⁵ The right to medical benefits is not limited to the period of entitlement to disability. To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition that require further medical treatment.⁶

A medical report opinion must be rationalized in order to be of probative value. Rationalized medical opinion evidence is medical evidence that is based on a complete factual and medical background, of reasonable medical certainty and supported by medical rationale explaining the opinion. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁷

ANALYSIS

In the present case, OWCP accepted an abdominal strain on April 30, 1997. Appellant's light-duty position was withdrawn in August 2009 and OWCP accepted a recurrence of disability and began paying compensation for wage loss. OWCP terminated compensation for wage-loss and medical benefits as of November 10, 2010 on the grounds that appellant's employment-related condition had resolved. It is its burden of proof to establish that appellant no longer has residuals of an employment-related condition.

⁴ *Jorge E. Stotmayor*, 52 ECAB 105, 106 (2000).

⁵ *Mary A. Lowe*, 52 ECAB 223, 224 (2001).

⁶ *Frederick Justiniano*, 45 ECAB 491 (1994).

⁷ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

The second opinion physician, Dr. Cohen, was provided a complete factual and medical background and opined, in his June 14 and September 20, 2010 reports, that appellant's employment-related condition had resolved. He noted that the time had elapsed since the work injury, and reviewed the medical history, examination results and imaging studies. Dr. Cohen provided a probative medical opinion, based on a complete background, that the accepted abdominal strain had resolved. He also opined that appellant's low back complaints were not related to the April 30, 1997 work injury.

The Board finds that Dr. Cohen provided a rationalized medical opinion on the issue presented. His opinion that appellant did not have a continuing employment-related condition was based on a complete factual and medical background, of reasonable medical certainty and supported by medical rationale.

The evidence from attending physician Dr. Kelman was of diminished probative value. He stated that appellant was treated for back pain and abdominal strain "dating to" an April 30, 1997 injury. Dr. Kelman does not provide a complete background discussing the employment incident and the medical history. He does not provide an opinion, with supporting medical rationale, that appellant continued to have an employment-related condition or disability after November 10, 2010.

Based on the evidence of record, the Board finds that Dr. Cohen represents the weight of the medical evidence. It is OWCP's burden of proof to terminate compensation, and OWCP met its burden of proof in this case.

On appeal, appellant states that she does not believe that OWCP met its burden to terminate compensation. She cited the case of *Regina T. Pellecchia*,⁸ where the Board found a conflict in the medical evidence and held that OWCP did not meet its burden of proof to terminate compensation. But in *Pellecchia* the attending physician had provide probative medical reports based on a complete and accurate background. For the reasons noted above, the attending physician's reports in the present case are of diminished probative value.

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 OWCP met its burden of proof to terminate compensation for wage-loss and medical benefits effective November 10, 2010.

⁸ 53 ECAB 155 (2001).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 16, 2012 is affirmed.

Issued: September 20, 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