

² 5 U.S.C. §§ 8101-8193.

ISSUE

The issue is whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective July 5, 2012 on the grounds that she had no residuals of her accepted work injury after that date.

FACTUAL HISTORY

On June 23, 2011 appellant, then a 38-year-old mail handler, filed an occupational disease claim alleging that she sustained a lumbar sprain due to her work duties over time which included engaging in lifting, pushing and bending. She indicated that she first became aware of her claimed condition on June 13, 2011. Appellant stopped work on June 14, 2011 and returned to limited-duty work on July 23, 2011. OWCP accepted that she sustained aggravation of thoracic or lumbosacral radiculitis/neuritis and paid disability compensation on the daily compensation rolls.

In a January 10, 2012 report, Dr. Allen Glushakow, an attending Board-certified orthopedic surgeon, indicated that appellant had lumbosacral tenderness without spasm on examination. Straight leg raising was negative, there were no focal findings on neurological examination and all spheres of range of motion were decreased by 10 percent. Dr. Glushakow diagnosed lumbosacral radiculitis, herniated L5-S1 disc and significant bulging at L4-5.

OWCP referred appellant to Dr. Jeffrey Lakin, a Board-certified orthopedic surgeon, for a second opinion examination and opinion regarding whether she continued to have residuals of her accepted work injury.

In a February 17, 2012 report, Dr. Lakin detailed appellant's factual and medical history, including the findings on diagnostic testing and physical examination. He noted that she currently complained of low back pain with prolonged positions, especially with twisting and standing. Dr. Lakin reported findings on physical examination, noting that appellant had minimal tenderness in her lower paralumbar musculature bilaterally with no spasms. Appellant was nontender in the bilateral sciatic notches and in the bilateral sacroiliac joints. She was able to stand on her heels and toes without difficulty and her gait was normal. Dr. Lakin indicated that the motor examination of appellant's legs revealed 5/5 strength upon hip flexion, knee extension, ankle dorsiflexion and plantar flexion, inversion and eversion of the feet. Appellant had negative straight leg raising in the sitting and supine positions and sensation was intact to light touch in both legs. Dr. Lakin indicated that she had a normal neurological examination with only some minimal tenderness in the lumbar spine. He posited that appellant's work-related lumbar radiculitis had resolved as she was neurologically intact and had no signs of any radicular findings in her legs. Appellant's complaints of right leg pain were subjective in that electrodiagnostic testing done on April 27, 2010 revealed a mild left L5-S1 radiculopathy with no mention of any radiculopathy on the right side. Dr. Lakin stated:

“The patient is neurologically intact and has no signs of radiculopathy on clinical evaluation.... As of this date, she has reached maximum medical improvement. [Appellant] is neurologically intact, has excellent function of the spine and lower extremities and the patient is at maximum medical improvement and the claimant

does not have any concurrent nonwork[-]related disability.... There is no need for any restrictions, as the patient has an unremarkable orthopedic examination and there is no reason why [appellant] cannot return back to work regular duty.”

In a May 15, 2012 letter, OWCP advised appellant that it proposed to terminate her wage-loss compensation and medical benefits on the grounds that she ceased to have residuals of her accepted work injury. It indicated that the proposed termination action was based on the well-rationalized opinion of Dr. Lakin, an OWCP referral physician. Appellant was provided 30 days to submit evidence or argument challenging the proposed action.

In an April 17, 2012 progress note, Dr. Glushakow stated that his examination of appellant’s back revealed lumbosacral tenderness and spasm. Appellant lacked 15 percent range of motion in all spheres of her back, straight leg raising was painful at 83 degrees and the neurological examination revealed no focal findings. Dr. Glushakow diagnosed lumbosacral radiculitis, herniated L5-S1 disc and probable disc protrusion at L4-5. In a May 24, 2012 form report, he provided work restrictions, including no lifting more than 10 pounds. Dr. Glushakow listed the date of injury as June 13, 2011. In a June 8, 2012 report, he reported examination findings and diagnosed lumbosacral radiculitis, herniated L5-S1 disc and probable disc protrusion at L4-5. Dr. Glushakow stated, “In my opinion, [appellant’s] diagnoses are causally related to the accident of June 13, 2011 and represent an aggravation of a previous condition as well.”

In a July 5, 2012 decision, OWCP terminated appellant’s wage-loss compensation and medical benefits effective July 5, 2012 on the grounds that she had no residuals of her accepted work injury after that date. It indicated that the weight of the medical evidence with respect to work-related residuals rested with the opinion of Dr. Lakin. The reports of Dr. Glushakow did not contain a rationalized opinion that appellant had residuals of her accepted work injury.

Appellant submitted November 13 and December 12, 2012 reports in which Dr. Glushakow posited that her herniated lumbar disc and lumbar radiculopathy conditions were greatly accelerated by the performance of her repetitive work duties overtime. Dr. Glushakow indicated that she continued to have disability due to the effects of this work-related aggravation.

In a March 7, 2013 decision, OWCP’s hearing representative affirmed the July 5, 2012 termination decision, finding that OWCP met its burden of proof to terminate appellant’s wage-loss compensation and medical benefits effective July 5, 2012 based on the well-rationalized opinion of Dr. Lakin. She further found that, after OWCP’s proper termination, appellant submitted additional medical evidence, *i.e.*, the November 13 and December 12, 2012 reports of Dr. Glushakow, which required additional development of the medical evidence. The case was remanded to OWCP for medical development to include obtaining a clarifying report from Dr. Lakin.³

³ The record contains an August 8, 2013 letter advising appellant about the reinstatement of her compensation. This does not constitute a final adverse decision of OWCP reviewable by the Board. *See* 20 C.F.R. § 501.2(c).

LEGAL PRECEDENT

Under FECA, once OWCP has accepted a claim it has the burden of justifying termination or modification of compensation benefits.⁴ It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁵ OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

ANALYSIS

OWCP accepted that appellant sustained aggravation of thoracic or lumbosacral radiculitis/neuritis due to her repetitive work duties overtime and paid disability compensation on the daily compensation rolls. It terminated her wage-loss compensation and medical benefits effective July 5, 2012 based on the February 17, 2012 report of Dr. Lakin, a Board-certified orthopedic surgeon serving as an OWCP referral physician.

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective July 5, 2012 on the grounds that she had no residuals of her accepted work injury after that date. The weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Lakin. The February 17, 2012 report of Dr. Lakin establishes that appellant had no disability due to her accepted work injury after July 5, 2012.

In his February 17, 2012 report, Dr. Lakin reported findings on physical examination, noting that appellant had minimal tenderness in the lower paralumbar musculature bilaterally with no spasms. Appellant was nontender in the bilateral sciatic notches and in the bilateral sacroiliac joints and her motor examination of the legs revealed 5/5 strength upon hip flexion, knee extension, ankle dorsiflexion and plantar flexion, inversion and eversion of the feet. She had negative straight leg raising in the sitting and supine positions and sensation was intact to light touch in both legs. Dr. Lakin indicated that appellant had a normal neurological examination with only some minimal tenderness in the lumbar spine and posited that her work-related lumbar radiculitis had resolved as she was neurologically intact and had no signs of any radicular findings in her legs. Appellant's complaints of right leg pain were subjective in that electrodiagnostic testing done on April 27, 2010 revealed a mild left L5-S1 radiculopathy with no mention of any radiculopathy on the right side. Dr. Lakin reiterated that her work injury had resolved and indicated that she could return to regular work.

The Board has carefully reviewed the opinion of Dr. Lakin and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Lakin provided a thorough factual and medical history and

⁴ *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

⁵ *Id.*

⁶ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

accurately summarized the relevant medical evidence.⁷ He provided medical rationale for his opinion by explaining that appellant exhibited no objective findings showing that she continued to have work-related leg radiculitis.

Before OWCP and on appeal, counsel argued that the reports of Dr. Glushakow showed that OWCP's termination of compensation effective July 5, 2012 was improper. However, the reports of Dr. Glushakow submitted prior to the July 5, 2012 termination were of limited probative value on the main issue of the present case. In a June 8, 2012 report, Dr. Glushakow diagnosed lumbosacral radiculitis, herniated L5-S1 disc and probable disc protrusion at L4-5 and stated, "In my opinion, her diagnoses are causally related to the accident of June 13, 2011 and represent an aggravation of a previous condition as well." This report is of limited probative value because Dr. Glushakow did not provide any rationale in support of his opinion on causal relationship.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.

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective July 5, 2012 on the grounds that she had no residuals of her accepted work injury after that date.

⁷ See *Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

⁸ See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (finding that a medical opinion not fortified by medical rationale is of little probative value). Dr. Glushakow indicated that appellant sustained an injury on June 13, 2011, but her accepted condition was actually sustained due to exposure to work factors over a period of time.

ORDER

IT IS HEREBY ORDERED THAT the March 7, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 12, 2014
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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