

On appeal, appellant contends that she did not submit any additional medical evidence in support of her continuing employment-related residuals and disability because she does not have medical insurance to cover a medical examination.

FACTUAL HISTORY

The Office accepted that on November 7, 1987 appellant, then a 27-year-old letter carrier, sustained a lumbosacral sprain in the performance of duty. Following this injury, she worked as a modified letter carrier. Appellant stopped work on May 16, 2005. The Office paid appropriate disability compensation.

On June 4, 2007 the Office referred appellant, together with a statement of accepted facts and medical record, to Dr. Robert S. Ferretti, a Board-certified orthopedic surgeon, for a second opinion on her need for further medical treatment, disability and ability to participate in vocational rehabilitation.²

In a June 25, 2007 medical report, Dr. Ferretti reviewed a history of appellant's November 7, 1987 employment injury, medical treatment and employment and social background. He noted her symptoms of pain in her lower back and bilateral legs and cramps in her bilateral feet and hands. On physical examination, Dr. Ferretti reported normal findings regarding appellant's ambulation, ability to sit, pelvis and bilateral lower extremities. He diagnosed posterior lumbar strain causally related to the November 7, 1987 employment injury based on a history of injury and medical record. Dr. Ferretti advised that a June 1, 2005 lumbar magnetic resonance imaging scan demonstrated a mild disc bulge at L4-5 and L5-S1 without spinal stenosis or foraminal narrowing. No other abnormalities were noted. Dr. Ferretti stated that appellant's prognosis was guarded, noting her subjective chronic pain. From an objective standpoint, her prognosis was favorable for resolution of symptoms considering the lack of objective findings to support her complaints. Dr. Ferretti stated that appellant's disability for work since May 16, 2005 was difficult to explain based on his objective evaluation. He recommended medication for symptomatic relief and a self-directed home exercise program. No additional physical therapy, gym or fitness center membership or pain management program was necessary. Dr. Ferretti advised that appellant did not have any nonindustrial or preexisting back conditions. The accepted employment injury temporarily aggravated her underlying lumbar degenerative disc disease with a bulging disc. The aggravation was temporary as there was no material change in the naturally occurring lumbar condition.

Dr. Ferretti opined that any symptomatic aggravation of the underlying condition following the employment injury had ceased. He stated that appellant continued to suffer from subjective residuals of the accepted employment-related back condition which included pain greater on the right with radiation to both of her thighs, abnormal sensations, tenderness, stiffness and decreased range of motion. Dr. Ferretti advised that there were no signs of nerve root involvement or any other neurological abnormality. He found there were no objective

² On May 30, 2007 the Office stated that appellant's December 2006 vocational rehabilitation counseling had been interrupted due to administrative action taken against her by the employing establishment. On June 25, 2007 appellant was separated from the employing establishment effective July 7, 2007 based on her physical inability to meet the requirements of her letter carrier position.

findings to support appellant's subjective residuals. Dr. Ferretti further found there was no need for sacroiliac joint and epidural injections or any other invasive procedure including, surgery. He concluded that appellant could work full time with restrictions as a modified letter carrier.

By letter dated July 17, 2007, the Office requested that Dr. James H. Rhee, an attending Board-certified physiatrist, review Dr. Ferretti's June 25, 2007 report and provide comments.

In a July 15, 2007 investigative report, the employing establishment's Office of Inspector General stated that appellant had been observed from March 15 to July 15, 2007 engaging in significant physical activity that exceeded her physical restrictions while in receipt of compensation for temporary total disability. A digital video disc (DVD) showed her physical activities.

In an August 6, 2007 report, Dr. Rhee noted appellant's complaint of pain which she rated as 5 to 6 out of 10. On physical examination, he reported continued tenderness across the lower lumbar region, more on the right side. Dr. Rhee found limited lumbar range of motion and a symmetrical gait. He diagnosed chronic low back pain mostly along the right side. Dr. Rhee ruled out chronic strain versus sacroiliac joint dysfunction. He recommended continued physical therapy and a gym membership. Dr. Rhee reviewed Dr. Ferretti's June 25, 2007 findings and stated that appellant continued to have residual spasm and tightness across the lumbosacral region with markedly limited spine motion based on his numerous medical examinations. Although he did not see any significant findings consistent with neurological compromise, she was an appropriate candidate for a fluoroscopically-guided sacroiliac joint injection. Dr. Rhee concluded that appellant should continue with her previous work restrictions and listed additional restrictions.

In an August 23, 2007 letter, the Office requested that Dr. Rhee respond to the employing establishment's DVD. It again requested that he review and respond to Dr. Ferretti's June 25, 2007 findings and provide comments on the nature and extent of appellant's employment-related residuals and disability and need for further medical treatment.

In an August 15, 2007 letter received by the Office, on August 23, 2007, Dr. Rhee reviewed the employing establishment's DVD. He stated that it did not appear that appellant demonstrated any obvious discomfort while performing the recorded activities. The activities appeared to be a gross misrepresentation of her range of motion and functional abilities as demonstrated and reported in her numerous clinical visits to Dr. Rhee's office. At that time, appellant demonstrated severe restrictions related to lumbar flexion and essentially minimal lumbar extension. She also moved fairly slowly at times.

In a September 7, 2007 report, Dr. Rhee opined that appellant did not appear to have significant residuals of the November 7, 1987 employment injury. Although he did not review a description of her letter carrier position, he opined that she could return to full-duty work with no restrictions. Dr. Rhee advised that further physical therapy was not necessary.

In a September 17, 2007 report, Dr. Rhee advised that appellant's continued chronic lumbar pain and restricted range of motion appeared to be primarily subjective in nature based on the employing establishment's DVD.

On December 17, 2007 the Office issued a notice of proposed termination of appellant's wage-loss compensation and medical benefits based on the medical opinions of Dr. Ferretti and Dr. Rhee. Appellant was afforded 30 days to respond to this notice. She did not respond.

In a decision dated January 17, 2008, the Office terminated appellant's compensation for wage-loss and medical benefits with regard to her accepted employment-related injury, effective that date. It found that the weight of the medical opinion evidence established that she no longer had any residuals or need for further medical treatment causally related to the accepted employment injury.

On February 7, 2008 appellant requested an oral hearing before an Office hearing representative.

In a January 28, 2008 report, Dr. Michael F. Overfield, a Board-certified family practitioner, advised that appellant was treated for sciatica on that date. He stated that the diagnosed condition caused her grave discomfort.

In a November 17, 2008 decision, an Office hearing representative affirmed the January 17, 2008 termination of compensation benefits.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to her employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.³ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴ Furthermore, 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, the Office must establish that a claimant no longer has residuals of an employment-related condition that requires further medical treatment.⁵

ANALYSIS

The Board finds that the Office met its burden of proof to terminate appellant's wage-loss and medical benefits as of January 17, 2008. The Office accepted that she sustained a lumbosacral sprain while in the performance of duty on November 7, 1987. It subsequently referred appellant to Dr. Ferretti for a second opinion evaluation.

Dr. Ferretti's June 25, 2007 report reviewed a history of appellant's November 7, 1987 employment-related injury and medical treatment. He found that there were no clinical findings of any residuals or disability causally related to the accepted employment injury. Dr. Ferretti

³ *Jason C. Armstrong*, 40 ECAB 907 (1989).

⁴ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁵ *Mary A. Lowe*, 52 ECAB 223 (2001); *Wiley Richey*, 49 ECAB 166 (1997).

advised that appellant's subjective complaints related to her back which included pain that radiated to her bilateral lower extremities, abnormal sensations, tenderness, stiffness and decreased range of motion were not supported by objective findings. His physical examination revealed normal findings which he listed in grave detail. Dr. Ferretti advised that there were no signs of nerve root involvement or any other neurological abnormality. He opined that the accepted employment injury temporarily aggravated appellant's underlying mild disc bulge at L4-5 and L5-S1 without spinal stenosis foraminal narrowing which had ceased as there was no material change in the naturally occurring condition. Dr. Ferretti advised that she did not require any further physical therapy, gym or fitness center membership, pain management program or invasive medical treatment such as, lumbar injections or surgery. He concluded that appellant was physically able to return to full-time work as a modified letter carrier with restrictions.

Dr. Rhee, an attending physician, initially found in an August 6, 2007 report that appellant had chronic low back pain mostly along the right side for which she required further medical treatment and a gym membership. He reviewed Dr. Ferretti's June 25, 2007 findings and advised that she continued to have residual spasm and tightness across the lumbosacral region with markedly limited spine motion. Dr. Rhee further advised that appellant should continue to follow her previous work restrictions, as well as, newly established restrictions. However, in subsequent reports, he changed his opinion after reviewing the employing establishment's DVD of her physical activities. Dr. Rhee found that appellant did not have any residuals of the November 7, 1987 employment injury. He further found that her chronic low back pain and restricted range of motion were subjective in nature. Dr. Rhee opined that appellant could return to full-duty work with no restrictions. He concluded that she did not require any further medical treatment.

The weight of the medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided the care of analysis manifested and the medical rationale expressed in support of stated conclusions.⁶ The Board finds that Dr. Ferretti's report, which is supported by Dr. Rhee, appellant's own attending physician, represents the weight of the medical evidence and that the Office properly relied on Dr. Ferretti's report in terminating appellant's compensation benefits on January 17, 2008. Dr. Ferretti fully discussed the history of injury and related his comprehensive examination findings in support of his opinion that appellant had no residuals or disability causally related to her accepted lumbosacral sprain.

Dr. Overfield's report which found that appellant had sciatica does not provide any opinion addressing the causal relationship between the November 7, 1987 employment-related injury and her current back condition and disability for work. The Board finds, therefore, that his report is of limited probative value.⁷

On appeal, appellant contended that she did not submit any additional medical evidence in support of her continuing employment-related residuals and disability because she does not have medical insurance to cover a medical examination. Upon securing such coverage and

⁶ See *Ann C. Leanza*, 48 ECAB 115 (1996).

⁷ *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

undergoing an examination, she can submit any new evidence to the Office and request reconsideration.⁸

CONCLUSION

The Board finds that the Office properly terminated appellant's compensation effective January 17, 2008 on the grounds that she no longer had any residuals or disability causally related to her accepted employment-related lumbosacral strain.

ORDER

IT IS HEREBY ORDERED THAT the November 17, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 9, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

⁸ 5 U.S.C. § 8128; 20 C.F.R. § 10.606.