

FACTUAL HISTORY

Appellant, a 54-year-old letter carrier, has an accepted claim for sacroiliac sprain, which arose on September 6, 2002.³ Following her injury, she resumed work in a limited-duty capacity. Appellant's restrictions included a three-hour mail route, which remained in effect for several years. She received compensation for intermittent periods of wage loss between January 2006 and February 2008. OWCP subsequently accepted a recurrence of disability beginning December 5, 2009. Appellant's physician, Dr. Timothy L. Allen, noted that she was able to perform her previous full-time, limited-duty assignment, which included three hours of carrying mail. The employing establishment changed appellant's limited-duty assignment from full time to part time, two hours per day.⁴

In a report dated March 4, 2010, Dr. Robert F. Draper, Jr., a Board-certified orthopedic surgeon and OWCP referral physician, found that appellant had reached maximum medical improvement and was capable of resuming her full-time regular duties without restrictions. He characterized appellant's clinical examination as completely normal. Dr. Draper's diagnoses included lumbosacral strain and degenerative lumbar disc disease with disc herniations at L1-2, L5-S1. He advised that appellant's lumbar degenerative disc disease, as confirmed by magnetic resonance imaging scans, was unrelated to her accepted employment injury. Dr. Draper found that the work-related condition, lumbar strain, had since resolved. He estimated that appellant would have been disabled for approximately three months following her original September 2002 injury. Dr. Draper did not recommend any additional treatment or testing for the accepted condition.⁵

On March 17, 2010 OWCP advised appellant that it proposed to terminate her medical benefits based on Dr. Draper's March 4, 2010 report.

OWCP subsequently received March 2010 progress reports from Dr. Allen who continued to diagnose sacroiliac strain. Appellant was still limited to carrying mail only three hours out of an eight-hour workday. When Dr. Allen examined appellant on February 22, 2010, he recommended an updated functional capacity evaluation.⁶ He reiterated this request in subsequent reports.

³ Appellant reported having been injured on September 6, 2002 while stepping off a step with her mailbag on her back. As early as October 7, 2002, the medical evidence revealed lumbar disc herniations. However, OWCP has not accepted this condition as being causally related to appellant's September 6, 2002 employment injury.

⁴ Appellant worked the 2-hour-a-day schedule provided, and OWCP ultimately paid her for approximately 360 hours of intermittent wage loss between December 5, 2009 and March 4, 2010.

⁵ Dr. Draper previously examined appellant at OWCP's behest on May 1, 2009. His latest report essentially reiterated his May 1, 2009 findings. Dr. Draper previously attributed appellant's ongoing complaints to what he characterized as her "preexisting degenerative disc disease."

⁶ Dr. Allen is a Board-certified family practitioner.

By decision dated April 21, 2010, OWCP terminated appellant's medical benefits based on Dr. Draper's March 4, 2010 report.⁷

Appellant requested a hearing before the Branch of Hearings & Review. She submitted a May 28, 2010 lumbar MRI scan and a June 8, 2010 report from Dr. Laura E. Ross, a Board-certified orthopedic surgeon. Dr. Ross diagnosed herniated discs at L1-2 and L5-S1, with left sacroiliitis. She reviewed Dr. Draper's report, and disagreed that appellant had a normal physical examination. Dr. Ross found that the two lumbar disc herniations were employment related, and not a preexisting injury as noted by Dr. Draper.

In August 2010, OWCP found a conflict in medical opinion between Dr. Ross and Dr. Draper, and therefore, scheduled appellant for a September 16, 2010 impartial medical examination with Dr. Howard Zeidman, a Board-certified orthopedic surgeon.

At the August 25, 2010 hearing, appellant's counsel argued that the opinion of Dr. Ross was more probative than that of Dr. Draper. In the alternative, counsel argued there was a conflict in medical opinion, thus requiring referral to an impartial medical examiner (IME).

After the hearing, OWCP received July 12 and August 16, 2010 follow-up reports from Dr. Ross, who diagnosed multilevel lumbar disc herniations.

In a November 10, 2010 decision, the hearing representative affirmed the April 21, 2010 termination of medical benefits based on Dr. Draper's March 4, 2010 report. He noted that in response to Dr. Ross' report, an impartial medical examination had been scheduled for September 16, 2010, but the referee medical report had not yet been received. The hearing representative further explained that because Dr. Ross' report was received after the April 21, 2010 termination of medical benefits, there was no basis for reinstating benefits pending a further decision on entitlement to wage-loss compensation based on the IME's forthcoming report.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.⁸ Having determined that an employee has a disability causally related to her federal employment, OWCP may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.⁹ The right to medical benefits for an accepted condition is not limited to the period of entitlement

⁷ The April 21, 2010 decision did not specifically mention Dr. Allen's February 22, 2010 report. The decision noted that appellant submitted some "old medical reports" that Dr. Draper had already reviewed. However, Dr. Allen's February 22, 2010 report was not submitted to the record until March 8, 2010, which was after Dr. Draper's March 4, 2010 examination and review. The March 17, 2010 notice of proposed termination also did not mention Dr. Allen's February 22, 2010 report.

⁸ *Curtis Hall*, 45 ECAB 316 (1994).

⁹ *Jason C. Armstrong*, 40 ECAB 907 (1989).

to compensation for disability.¹⁰ To terminate authorization for medical treatment, OWCP must establish that the employee no longer has residuals of an employment-related condition which require further medical treatment.¹¹

ANALYSIS

While the hearing representative acknowledged a conflict between Dr. Ross and Dr. Draper regarding ongoing residuals and work restrictions.¹² The hearing representative noted that the conflict was created by evidence submitted subsequent to the date medical benefits were terminated. He noted that, if the impartial examiner's report favored appellant, her medical benefits could be reinstated at a later date.

The record confirms Dr. Allen's February 22, 2010 report, which predated Dr. Draper's opinion by less than two weeks. Dr. Allen diagnosed sacroiliac sprain; the same medical condition OWCP accepted as employment related. He also indicated that appellant should continue with her previous work restrictions pending an updated functional capacity evaluation. Dr. Allen's opinion, like Dr. Ross' later report, varied from the opinion of Dr. Draper who apparently was not provided Dr. Allen's February 22, 2010 examination findings. It is also noteworthy that not one of the three decisions regarding the termination of medical benefits specifically referenced Dr. Allen's February 22, 2010 report. Although OWCP declared a conflict based on Dr. Ross' report, a conflict arose prior to that report based on Dr. Allen's February 22, 2010 findings. As such, OWCP did not meet its burden of proof in terminating appellant's medical benefits effective April 21, 2010.

CONCLUSION

The Board finds that OWCP improperly terminated appellant's medical benefits effective April 21, 2010.

¹⁰ *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

¹¹ *Calvin S. Mays*, 39 ECAB 993 (1988).

¹² FECA provides that, if there is disagreement between the physician making the examination for OWCP and the employee's physician, OWCP shall appoint a third physician who shall make an examination. 5 U.S.C. § 8123(a); *Shirley L. Steib*, 46 ECAB 309, 317 (1994). Where OWCP has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight. *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

ORDER

IT IS HEREBY ORDERED THAT the November 10, 2010 decision of the Office of Workers' Compensation Programs is reversed.

Issued: November 3, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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