

FACTUAL HISTORY

This case has previously been before the Board. In a February 24, 2010 decision, the Board found that OWCP met its burden of proof to terminate appellant's compensation benefits effective June 8, 2008, based on the opinion of Dr. Robert Israel, a Board-certified orthopedic surgeon and OWCP referral physician. The Board further found that appellant failed to meet her burden of proof to establish that she had any disability after June 8, 2008 causally related to the accepted low back strain caused by a June 13, 2001 employment injury.² The law and the facts of the previous Board decision are incorporated herein by reference.

On February 11, 2011 appellant, through counsel, requested reconsideration, asserting that the termination was in error and that she continued to suffer employment-related disability. She submitted a June 4, 2008 report from Dr. David J. Langer, a Board-certified neurosurgeon, previously of record and additional medical evidence including a July 11, 2005 report in which Dr. Daniel R. O'Connor, a Board-certified orthopedic surgeon, advised that she was seen for right knee pain and paresthesias in both feet. The physician provided examination findings and diagnosed patellofemoral syndrome and medial meniscal tear. Appellant also submitted December 3, 2010 x-rays and magnetic resonance imaging (MRI) scan studies dated December 22, 2010 and January 5, 2011.³

In a January 31, 2011 report, Dr. Rafael Antonio Rodriguez, an anesthesiologist practicing pain management, reported that on June 13, 2001 appellant sustained employment-related injuries of the lower back, hips and right knee. He noted that in 2005 she underwent bariatric surgery, that in 2008 her back and knee pain worsened and that she returned to see him on December 3, 2010 because of recurrent back pain that radiated into her lower extremities, that was associated with paresthesias, cramps and weakness of both calves and increased knee pain and swelling. Dr. Rodriguez advised that she walked with an antalgic gait and used a cane for assistance. He provided examination findings, noting significant lumbosacral paraspinous tenderness and spasm with a positive straight leg raising examination and painful range of

² Docket No. 09-1229 (issued February 24, 2010). On June 13, 2001 appellant, a casual mail sorter, injured her lower back while loading sacks and flats of mail. She stopped work and returned to modified duty on June 19, 2001. OWCP accepted that appellant sustained a work-related low back sprain. Appellant was released by the employing establishment on December 31, 2001 because her noncareer appointment expired. She did not return to federal employment.

³ December 3, 2010 x-rays of the lumbar spine showed narrowing of the L5-S1 disc space and degenerative facet joint arthrosis at L4-5 and L5-S1. Pelvis x-rays demonstrated no osseous abnormality, and x-rays of both knees demonstrated early osteoarthritis of the right knee with suprapatellar effusion and no osteoarthritis of the left knee. A December 22, 2010 MRI scan of the lumbar spine demonstrated no significant change from a prior study and multilevel disc bulges and mild spinal stenosis at L5-S1 with multilevel neuroforaminal encroachment. A January 5, 2011 MRI scan study of the right knee demonstrated intrasubstance degeneration of the anterior and posterior horns of the lateral meniscus, osteoarthritis of the patellofemoral compartment, a small partial thickness loss and fraying of articular cartilage, normal collateral and cruciate ligaments and small suprapatellar effusion. A January 5, 2011 MRI scan study of the left knee showed osteoarthritis of the patellofemoral compartment no meniscal tear, normal collateral and cruciate ligaments and small suprapatellar effusion.

motion. Muscle tone, strength, pinprick, touch and proprioception were grossly intact in both lower extremities. Dr. Rodriguez reviewed the x-ray and MRI scan findings, and stated:

“It is quite obvious that [appellant] sustained multiple injures with significant residual damage and clear indication for further significant problems for the future during the accident she sustained while at work on June 13, 2001. It appears that she will have to proceed with the previously discussed surgeries in her spine and knees to improve pain and function. These injuries are permanent and will never improve to a degree to allow [appellant] to return to work as a mail handler or any activity that requires normal physical fitness.”

In a merit decision dated May 12, 2011, OWCP found that the medical evidence was insufficient to warrant modification of its previous determination.

LEGAL PRECEDENT

By its February 24, 2010 decision, the Board found that OWCP met its burden of proof to terminate appellant’s compensation benefits effective June 8, 2008 on the grounds that she had no residuals of the accepted low back strain. A decision of the Board is final upon expiration of 30 days from the date of the decision.⁴

As OWCP met its burden of proof to terminate appellant’s compensation benefits effective June 8, 2008, the burden shifted to her to establish that she had any continuing disability causally related to her accepted right upper extremity injury.⁵ To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such a causal relationship.⁶ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁷ Rationalized medical evidence is medical evidence which includes a physician’s rationalized medical opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁸

⁴ 20 C.F.R. § 105.6(d). There is no indication in the case record that appellant filed a petition for reconsideration of the Board’s June 8, 2008 decision pursuant to 20 C.F.R. § 501.7. *See W.M.*, Docket No. 11-1005 (issued November 23, 2011).

⁵ *See Joseph A. Brown, Jr.*, 55 ECAB 542 (2004).

⁶ *Jennifer Atkerson*, 55 ECAB 317 (2004).

⁷ *Id.*

⁸ *Leslie C. Moore*, 52 ECAB 132 (2000); *Victor J. Woodhams*, 41 ECAB 345 (1989).

ANALYSIS

The Board finds that appellant submitted insufficient medical evidence with her February 11, 2011 reconsideration request to establish that she continued to be disabled after June 8, 2008 due to the June 13, 2001 employment injury.

As to appellant's argument on appeal that the accepted conditions should be expanded, the record does not contain a final OWCP decision regarding this claim. Therefore, the Board does not have jurisdiction over that issue.⁹

With her reconsideration request, appellant submitted a July 11, 2005 report from Dr. O'Connor that is irrelevant to her current condition. She also resubmitted a June 4, 2008 report from Dr. Langer that had previously been reviewed by both OWCP and the Board in its February 24, 2010 decision. Moreover, Dr. Langer merely indicated that appellant was injured at work in June 2001, reviewed MRI scan findings and recommended surgery. He did not provide an opinion regarding the cause of any condition or an opinion regarding her ability to work. Likewise, the diagnostic studies submitted on reconsideration provided no opinion on disability, and the only accepted condition in this case is low back strain.

Dr. Rodriguez, who practices pain management, began treating appellant in June 2001. In a January 31, 2011 report, he opined that she sustained multiple injuries with significant residual damage on June 13, 2001, and would need back and knee surgery, and advised that she could not return to work as a mail handler. The Board finds this report of diminished probative value because it does not contain sound medical reasoning establishing that appellant was totally disabled after June 8, 2008 due to the accepted low back strain caused by the June 2001 employment injury.¹⁰ Dr. Rodriguez did not explain why the 2001 work injury caused continuing disabling residuals, especially considering that appellant had not worked since December 2001. There is also nothing in the record to indicate that he saw or treated appellant between May 2008, and her visit in December 2010.

The reports submitted on reconsideration are therefore entitled to little probative value and, as appellant did not provide a rationalized medical opinion on reconsideration, she did not meet her burden of proof to establish that she continues to have work-related disability due to the accepted low back strain caused by the June 13, 2001 employment injury.¹¹

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 10.607.¹²

⁹ 20 C.F.R. § 501.2(c).

¹⁰ *Sandra D. Pruitt*, 57 ECAB 126 (2005).

¹¹ *S.S.*, 59 ECAB 315 (2008).

¹² Regarding appellant's assertion that Dr. Rodriguez's January 31, 2011 report created a conflict in medical evidence, a simple disagreement between two physicians does not, of itself establish a conflict. *John D. Jackson*, 55 ECAB 465 (2004). As noted above, Dr. Rodriguez's report was of limited probative value.

CONCLUSION

The Board finds that appellant did not establish that she had any continuing employment-related disability or condition after June 8, 2008 causally related to the June 13, 2001 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the May 12, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 13, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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