United States Department of Labor
Employees' Compensation Appeals Board

I.N., Appellant	)	
and	)	**Docket No. 12-1717**
	)	**Issued: February 6, 2013**
U.S. POSTAL SERVICE, POST OFFICE, Perth Amboy, NJ, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 14, 2012 appellant, through her attorney, filed a timely appeal from a May 14, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) terminating her compensation benefits. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether OWCP properly terminated appellant's compensation benefits effective October 20, 2011 as she had no further disability due to her August 7, 2010 employment injury; and (2) whether it properly terminated her entitlement to medical benefits.

FACTUAL HISTORY

On August 7, 2010 appellant, then a 33-year-old letter carrier, filed a traumatic injury claim alleging that on that date she sustained an injury to her head when she was hit by plaster

[1] 5 U.S.C. § 8101 *et seq.*

falling from a building. She stopped work on August 7, 2010. OWCP accepted the claim for cervical radiculitis and paid appellant compensation for total disability beginning September 24, 2010.

An August 18, 2010 magnetic resonance imaging (MRI) scan study of appellant's cervical spine showed "mild multilevel disc bulging with uncovertebral joint hypertrophy at C3-C4 and C4-C5 and [a] small left paracentral disc hernation at C4-C5" without significant cord compression or stenosis. An August 18, 2010 MRI scan study of the right shoulder showed degenerative changes of the acromioclavicular joint with mild impingement and a suspected partial tear of the supraspinatus tendon.

In a report dated January 5, 2011, Dr. Peter S. Staats, an attending Board-certified anesthesiologist, discussed appellant's complaints of right shoulder pain, migraines, dizziness and blackouts. He noted that an MRI scan study revealed herniations of the cervical spine.

On January 18, 2011 OWCP referred appellant to Dr. Jerome D. Rosman, a Board-certified orthopedic surgeon, for a second opinion examination. He reviewed the history of injury to her head, neck, back and right shoulder when "she was hit on the head by falling plaster." Dr. Rosman diagnosed resolved radiculitis of the cervical spine. He opined that appellant could resume her usual employment. In a February 20, 2011 addendum, Dr. Rosman advised that she had no further objective findings of any employment-related condition or need for further medical treatment.

On February 22, 2011 OWCP referred appellant to Dr. Kamran Tabaddor, a Board-certified neurosurgeon, for a second opinion examination.

In a report dated February 23, 2011, Dr. Staats noted that appellant's pain due to her cervical disc herniation was improving and found that she could begin working limited duty.

On March 10, 2011 Dr. Tabaddor discussed appellant's complaints of headaches, blurred vision, dizziness and occasional blackouts after being struck on the head on August 7, 2010. He diagnosed "[d]iffuse musculoskeletal pain following the injury she sustained on August 7, 2010" without objective findings of a neurological impairment. Dr. Tabaddor found that appellant could resume limited-duty employment. On April 25, 2011 he clarified that she could work without restrictions from a neurological standpoint.

In a report dated April 6, 2011, Dr. Staats found that appellant experienced continued pain in her cervical spine and across the mid back." He recommended a functional capacity evaluation and a thoracic facet block. A functional capacity evaluation, performed on April 22, 2011, noted that appellant could perform light work and that her limitations resulted primarily from deconditioning.

On May 10, 2011 OWCP advised appellant that it proposed to terminate her compensation and authorization for medical treatment based on the opinions of Drs. Rosman and Tabbador that she had no residuals of her work injury.

By decision dated May 11, 2011, OWCP terminated her compensation and entitlement to medical benefits effective that date.

On May 20, 2011 appellant, through her attorney, requested an oral hearing. Following a preliminary review, on August 16, 2011, an OWCP hearing representative vacated the May 11, 2011 termination. She found that the record contained a conflict in medical opinion between the attending physician, Dr. Staats, and OWCP referral physicians, Dr. Rosman and Dr. Tabaddor, regarding whether appellant had continuing disability due to her work injury.

On September 8, 2011 OWCP referred appellant to Dr. Edward Krisiloff, a Board-certified orthopedic surgeon, for an impartial medical examination. The record contains an MEO23 report stating that a referee was scheduled with Dr. Krisiloff. The record also contains a screen showing that OWCP bypassed Dr. Cornelius Stove, a Board-certified orthopedic surgeon, as impartial medical examiner because he did not accept OWCP referrals.

In a report dated September 20, 2011, Dr. Krisiloff discussed appellant's work injury and reviewed the medical evidence of record. He diagnosed cervical radiculitis due to the August 2010 work injury. Dr. Krisiloff related:

> "I would state that by December 8, 2010 [appellant] had recovered and she was capable of returning to work. Physical examination at this time shows no objective findings in the neck, shoulder or back. MRI [scan] evaluation of the cervical spine after the injury revealed a normal curvature to the spine, which is indicative of the absence of muscle spasm. [Appellant] did have some bulging of the discs in her neck which could certainly be physiologic and these were noted over multiple levels. The disc herniation noted at C4[-]C5 was toward the left side, where the claimant was not symptomatic. Joint hypertrophy in the neck is certainly not on the basis of a traumatic injury. The MRI [scan] study of the shoulder showed degenerative changes in the AC [acromioclavicular] joint, which is again not related to her accident. There was some increased signal from the supraspinatus tendon which was interpreted as a possible partial thickness tear. However, no definite full thickness injury was noted."

Dr. Krisiloff opined that appellant's cervical radiculitis had resolved and that she had no further employment-related disability.

By decision dated October 20, 2011, OWCP terminated appellant's compensation and authorization for medical treatment effective that date. It found that Dr. Krisiloff's opinion represented the weight of the evidence and showed that she had no residuals of her work injury.

On October 25, 2011 appellant, through her attorney, requested an oral hearing. At the hearing, held on February 28, 2012, her attorney challenged the selection of Dr. Krisiloff as impartial medical examiner and argued that his report was not rationalized. Counsel argued that Dr. Krisiloff did not explain the effect of positive diagnostic evidence of a tear of the supraspinatus tendon in the right shoulder and a disc herniation at C4-5.

In a report dated February 9, 2012, Dr. Roger Lallemand, Jr., a Board-certified anesthesiologist, related that he initially treated appellant on August 10, 2010 for back and neck pain due to an August 7, 2010 employment injury. He diagnosed low back pain, lumbar and cervical radiculitis and chronic pain syndrome. Dr. Lallemand related that appellant's neck pain

radiating into her hands causing severe pain and numbness and that her back pain at L4-5 and L5-S1 radiated into her legs from bulging discs. He further noted that she had dizzy spells and depression. Dr. Lallemand stated:

> "The cervical and thoracic spine muscles are closely related and intermingled. These muscles span the length of both the cervical and thoracic spine. [Appellant's] injuries and associated symptoms to her head/neck correlate to her current injuries to her thoracic spine. As such I am recommending to extend her disability."

In a report dated February 13, 2012, Dr. Lallemand discussed appellant's complaints of neck and back pain. He diagnosed lumbar radiculitis, cervical radiculitis and myalgia.

By decision dated May 14, 2012, an OWCP hearing representative affirmed the October 20, 2011 decision.

On appeal appellant's attorney argued that Dr. Krisiloff was not properly selected as the impartial medical examiner. He maintains that OWCP did not provide its reason for bypassing Dr. Stove. Counsel also argues that Dr. Krisiloff did not adequately address the positive objective findings.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.[2] It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.[3] OWCP's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[4]

Section 8123(a) provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.[5] The implementing regulations state that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an OWCP medical adviser, OWCP shall appoint a third physician to make an examination. This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.[6] In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving

[2] *Elaine Sneed*, 56 ECAB 373 (2005).

[3] *Fred Reese*, 56 ECAB 568 (2005); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

[4] *Gewin C. Hawkins*, 52 ECAB 242 (2001).

[5] 5 U.S.C. § 8123(a).

[6] 20 C.F.R. § 10.321.

the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[7]

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained cervical radiculitis due to an August 7, 2010 employment injury. It paid her compensation for disability beginning September 24, 2010. OWCP properly determined that a conflict in medical opinion existed between Dr. Staats, appellant's attending physician, and Dr. Rosman and Dr. Tabaddor, who provided second opinion examinations, regarding whether she had continuing employment-related disability. It referred her to Dr. Krisiloff for an impartial medical examination.

Where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[8] The Board finds that the opinion of Dr. Krisiloff, a Board-certified orthopedic surgeon selected to resolve the conflict in opinion, is well rationalized and based on a proper factual and medical history. Dr. Krisiloff accurately summarized the relevant medical evidence, provided detailed findings on examination and reached conclusions about appellant's condition which comported with his findings.[9] In a report dated September 20, 2011, he reviewed the medical evidence of record, including the results of diagnostic studies. On examination, Dr. Krisiloff found no objective findings of abnormalities of the neck, shoulder or back. He advised that bulging cervical discs on MRI scan study were physiologic and noted that an MRI scan study obtained after the injury did not indicate muscle spasm. Dr. Krisiloff further indicated that the cervical disc hernation at C4-5 was on the left side and that appellant did not have symptoms on the left side. He advised that degenerative changes in the AC joint on MRI scan study of the shoulder were not due to the work injury and that while findings showed a possible partial thickness tear there was no full thickness injury. Dr. Krisiloff concluded that appellant had no residuals of her cervical radiculitis. He provided rationale for his opinion by explaining that her examination did not show objective findings of continued radiculitis. As Dr. Krisiloff's report is detailed, well rationalized and based on a proper factual background, his opinion is entitled to the special weight accorded an impartial medical examiner.[10] OWCP thus met its burden of proof to terminate appellant's compensation benefits for the accepted condition of cervical radiculitis.

The remaining medical evidence submitted prior to OWCP's termination of compensation is insufficient to establish that appellant had any further disability due to her August 7, 2010 injury. In a report dated February 9, 2012, Dr. Lallemand stated that he treated appellant on August 10, 2010 for neck and low back pain after an August 7, 2010 work injury. He diagnosed low back pain, lumbar and cervical radiculitis and chronic pain syndrome.

[7] *R.C.*, 58 ECAB 238 (2006); *Barry Neutuch*, 54 ECAB 313 (2003); *David W. Pickett*, 54 ECAB 272 (2002).

[8] *J.M.*, 58 ECAB 478 (2007); *Darlene R. Kennedy*, 57 ECAB 414 (2006).

[9] *See Manuel Gill*, 52 ECAB 282 (2001).

[10] *See J.M., supra* note 8; *Katheryn E. Demarsh*, 56 ECAB 677 (2005).

Dr. Lallemand related that appellant's neck and head symptoms were related to her thoracic spine injuries. He found that she remained disabled. Dr. Lallemand, however, did not directly relate appellant's disability to her accepted employment injury and attributed her disability to a thoracic spine condition. Consequently, his report is of diminished probative value.

On February 13, 2012 Dr. Lallemand reviewed appellant's complaints of neck and back pain and diagnosed lumbar radiculitis, cervical radiculitis and myalgia. As he did not address the cause of her condition or whether she was disabled from employment, his report is of little probative value.[11]

On appeal appellant's attorney contends that OWCP improperly selected Dr. Krisiloff as the impartial medical examiner. He argues that it did not provide a reason or bypassing Dr. Stove. OWCP has an obligation to verify that it selected Dr. Krisiloff in a fair and unbiased manner.[12] The record contains an MEO23 stating that appellant's referee appointment was scheduled with Dr. Krisiloff. OWCP further provided a screen shot showing that Dr. Stove was bypassed because he did not accept its patients. There is no evidence that it improperly bypassed Dr. Stove.[13] The Board further finds that OWCP provided documentation regarding Dr. Krisiloff's selection.[14]

Appellant's attorney also argues that Dr. Krisiloff did not address the positive findings on diagnostic studies. Dr. Krisiloff, however, reviewed and discussed the results of the diagnostic studies.

LEGAL PRECEDENT -- ISSUE 2

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.[15] To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.[16]

ANALYSIS -- ISSUE 2

OWCP met its burden of proof to terminate authorization for medical benefits through the opinion of Dr. Krisiloff, the impartial medical examiner, who found that appellant had no

[11] *See A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of little probative value on the issue of causal relationship); *Carol A. Lyles*, 57 ECAB 265 (2005) (whether a particular injury caused an employee disability from employment is a medical issue which must be resolved by competent medical evidence).

[12] *See M.A.*, Docket No. 07-1344 (issued February 19, 2008).

[13] *See K.S.*, Docket No. 12-184 (issued September 11, 2012).

[14] *Id*.

[15] *T.P.*, 58 ECAB 524 (2007); *Pamela K. Guesford*, 53 ECAB 727 (2002).

[16] *Id*.

residuals of her accepted condition. Dr. Krisiloff explained that, based on his physical examination and the diagnostic studies, she had no further objective evidence of cervical radiculitis. As his opinion is detailed and well rationalized, it is entitled to the special weight accorded an impartial medical examiner and establishes that appellant has no further residuals of her accepted employment injury.

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 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that OWCP properly terminated appellant's compensation and entitlement to medical benefits effective October 20, 2011 as she had no further disability or condition causally related to her August 7, 2010 employment injury;

ORDER

IT IS HEREBY ORDERED THAT the May 14, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 6, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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