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K.J., Appellant)	
)	
and)	Docket No. 13-702
)	Issued: May 9, 2013
DEPARTMENT OF VETERANS AFFAIRS,)	
VETERANS AFFAIRS MEDICAL CENTER,)	
Louisville, KY, Employer)	
)	

Case Submitted on the Record

Before:
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

On February 5, 2013 appellant, through her attorney, filed a timely appeal from a September 28, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) terminating her compensation and a December 12, 2012 nonmerit decision denying her request for reconsideration. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case and over the December 12, 2012 nonmerit decision.

The issues are: (1) whether OWCP properly terminated appellant's wage-loss compensation effective November 9, 2011 on the grounds that she had no further disability due to her November 13, 2010 employment injury; (2) whether it properly terminated authorization for medical benefits; (3) whether appellant has established continuing disability after

¹ 5 U.S.C. § 8101 *et seq.*

November 9, 2011 due to her accepted work injury; and (4) whether OWCP properly denied her request to reopen her case for further review of the merits under 5 U.S.C. § 8128.

FACTUAL HISTORY

On November 18, 2010 appellant, then a 45-year-old nursing assistant, filed a traumatic injury claim alleging that on November 13, 2010 she injured her lower back when she was thrown on the floor by a patient. OWCP accepted the claim for lumbar sprain, spinal stenosis at L3-4 and lumbosacral spondylosis without myelopathy. Appellant stopped work on November 13, 2010 and returned to limited-duty employment on November 23, 2010. She stopped work again on March 23, 2011 and did not return. OWCP paid appellant compensation for total disability.

On April 19, 2011 appellant received treatment from a nurse for neck, mid-back and right shoulder pain due to a March 31, 2011 motor vehicle accident. She informed the nurse that Dr. Robert Roach, a chiropractor, was treating her for the injuries sustained in the motor vehicle accident.

On May 26, 2011 OWCP referred appellant to Dr. Stanley W. Collis, a Board-certified orthopedic surgeon, for a second opinion examination.

On June 22, 2011 Dr. Louie N. Williams, a Board-certified physiatrist, evaluated appellant for low back, upper middle back, right shoulder and left knee pain. He stated, “[Appellant] had a work injury this past November and subsequently had a motor vehicle accident in March. She was taken off work prior to the motor vehicle accident apparently.” Dr. Williams diagnosed facet syndrome, radiculopathy, myofascial/fibromyalgia and degenerative disc disease and found that appellant should remain off work pending epidural injections.

On July 8, 2011 Dr. Roach diagnosed cervical, thoracic and lumbar sprain/strain, lumbar disc displacement and muscle spasms. He attributed the conditions to the March 31, 2011 motor vehicle accident.

In a report dated August 15, 2011, Dr. Raghunath Gudibanda, a Board-certified neurologist, discussed appellant’s history of an employment injury on November 13, 2010 and a subsequent motor vehicle accident in March 2011. He diagnosed lumbar degenerative disc disease, lumbar facet arthropathy, lumbar myofascial pain and left L5-S1 radiculopathy. Dr. Gudibanda scheduled lumbar steroid injections.

On August 23, 2011 Dr. Collis reviewed appellant’s history of a November 13, 2010 employment injury and motor vehicle accidents in 2004, 2007 and on March 31, 2011. On examination, he measured good back movement without guarding or pain and a negative straight leg sign and Lasegue sign. Dr. Collis found “no evidence of muscle wasting or muscle weakness in either lower extremity” and noted that diagnostic studies did not show herniations or nerve compression. He stated, “There was no evidence of lumbar sprain or any subjective findings of spinal stenosis. I did not see any obvious lumbosacral spondylosis on this examination.”

Dr. Collis advised that appellant's subjective complaints outweighed the physical findings and determined that she could resume her usual employment without restrictions.

On September 21, 2011 OWCP notified appellant that it proposed to terminate her wage-loss compensation and medical benefits.² Appellant did not respond.

By decision dated November 9, 2011, OWCP terminated appellant's compensation benefits effective that date. It found that Dr. Collis' opinion represented the weight of the medical evidence and established that she had no further employment-related disability or residuals requiring medical treatment.

In a report dated November 11, 2011, Dr. Michael T. Casnellie, a Board-certified orthopedic surgeon, reviewed appellant's history of a November 13, 2010 employment injury and a March 31, 2011 motor vehicle accident. He noted that the motor vehicle accident had "aggravated her pain and symptoms, but she did ultimately go back to baseline pain levels which she had been experiencing from the work-related injury [of] November 13, 2010." On examination, Dr. Casnellie found a mild positive straight leg raise on the left and pain in the lower back. He diagnosed lumbar facet arthropathy, lumbar stenosis and low back pain and recommended lumbar facet injections. Dr. Casnellie stated that appellant was unable to work.

In a progress report dated February 28, 2012, Dr. Casnellie again recommended facet injections. He noted that appellant wanted to return to work because she had no income and indicated that he would "arbitrarily place her in the sedentary category level of work..."³

In a report dated May 14, 2012, Dr. Roach reviewed the findings from a magnetic imaging study and computerized tomography scan and diagnosed disc bulging and degenerative changes. He found that appellant's injuries in her 2011 motor vehicle accident were more severe due to her preexisting degenerative condition.

On November 19, 2011 appellant requested reconsideration. In an undated statement, her attorney argued that she continued to experience back pain and requested that she receive a schedule award based on Dr. Casnellie's March 19, 2012 report.⁴ Counsel contended that Dr. Roach's May 14, 2012 letter established that appellant sustained more significant injuries in the March 31, 2011 motor vehicle accident due to her prior employment injury. Appellant was unable to perform her regular employment and required additional medical treatment for her injuries. Counsel also maintained that Dr. Collis did not perform a complete examination or review all the medical evidence of record.

² On September 14 and 28, 2011 Dr. Gudibanda performed lumbar epidural steroid injections.

³ On March 28, 2012 Dr. David P. Rouben, a Board-certified orthopedic surgeon, diagnosed stenosis and spondylosis and performed a lumbar facet joint injection. On April 30, 2012 Dr. Casnellie recommended an ablation. On June 4, 2012 appellant underwent radiofrequency ablation.

⁴ In a report dated March 19, 2012, Dr. Casnellie advised that appellant had a five to eight percent whole person impairment due to her lumbar spine condition.

By decision dated September 28, 2012, OWCP denied modification of its November 19, 2011 decision. It found that the reports from Dr. Roach were of no probative value as he did not diagnose a subluxation by x-ray and that the remaining medical evidence failed to provide a rationalized opinion explaining how appellant remained disabled due to her work injury.

In an unsigned affidavit received November 23, 2012, appellant requested reconsideration. She argued that Dr. Collis did not perform his examination “with due diligence” or review the medical records she brought to the examination. Appellant maintained that she continued to experience disability due to her work injury and that the employing establishment was acting unreasonably by refusing to let her return to work with limitations.

In a decision dated December 12, 2012, OWCP denied appellant’s request for reconsideration finding that she did not submit sufficient evidence or argument to warrant reopening her case for further review of the merits. It noted that she did not provide any new medical evidence with her request for reconsideration.

On appeal, appellant’s attorney contends that appellant sustained permanent impairment entitling her to a schedule award as established by the March 19, 2012 report of Dr. Casnellie. Counsel also argued that Dr. Roach’s May 14, 2012 report supports that appellant’s back injuries arising from her March 2011 motor vehicle accident were more severe because of her November 2010 employment injury. Dr. Casnellie found that appellant could perform sedentary work and counsel maintained that appellant continued to benefit from medical treatment for her injury. Counsel also maintains that Dr. Collis did not review the medical records appellant brought to the examination or perform a complete physical examination.

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. 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 in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained lumbar sprain, spinal stenosis at L3-4 and lumbosacral spondylosis without myelopathy due to a November 13, 2010 employment injury. Appellant worked limited-duty employment until March 23, 2011, when she stopped work and did not return. OWCP paid wage-loss compensation for total disability until November 9, 2011, when it terminated her compensation based on the opinion of Dr. Collis, a referral physician.

The Board finds that the August 23, 2011 report of Dr. Collis is probative and well rationalized and represents the weight of the medical evidence. Dr. Collis reviewed the history

⁵ *Elaine Sneed*, 56 ECAB 373 (2005); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

⁶ *Gewin C. Hawkins*, 52 ECAB 242 (2001).

of appellant's November 13, 2010 work injury and the history of motor vehicle accidents in 2004, 2007 and on March 31, 2011. He also accurately summarized the relevant medical evidence.⁷ On examination, Dr. Collis found no evidence of atrophy or weakness in the lower extremities and that appellant moved her back well and without pain. He further found a negative straight leg sign and that objective studies did not reveal a herniation or compression of a nerve. Dr. Collis explained that the subjective complaints outweighed the objective findings and concluded that appellant had no further evidence of lumbar sprain, spinal stenosis or lumbosacral spondylosis. He found that she could return to her usual employment without restrictions. Dr. Collis' report, which is based on a complete and accurate work history and supported by rationale, constitutes the weight of the evidence and establishes that appellant has no further disability due to her November 13, 2010 employment injury.⁸

The remaining evidence submitted prior to the termination of compensation is insufficient to show that appellant had any remaining work-related disability. Appellant received treatment from Dr. Roach, a chiropractor. Section 8101(2) of FECA provides that the term "physician" includes chiropractors only to the extent that their reimbursable services are limited "to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist..."⁹ A chiropractor is not considered a "physician" as defined under FECA unless it is established that there is a subluxation as demonstrated by x-ray evidence.¹⁰ As Dr. Roach did not diagnose a subluxation as demonstrated by x-ray, he is not a "physician" under FECA and his report is of no probative value.¹¹

In a report dated June 22, 2011, Dr. Williams noted appellant's history of both a work injury in November 2010 and a motor vehicle accident in March 2011. He diagnosed facet syndrome, radiculopathy, fibromyalgia and degenerative disc disease. In a report dated August 15, 2011, Dr. Gudibanda reviewed the history of injury and diagnosed lumbar degenerative disc disease, facet arthropathy and left L5-S1 radiculopathy. Neither Dr. Williams nor Dr. Gudibanda, however, addressed the cause of the diagnosed conditions. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.¹²

On appeal, appellant's attorney asserts that Dr. Collis did not review the medical records she took to the examination or perform an adequate examination. As discussed, however, Dr. Collis reviewed the medical evidence of record provided by OWCP and listed detailed findings on examination.

⁷ See *Melvina Jackson*, 38 ECAB 443 (1987).

⁸ See *E.J.*, 59 ECAB 695 (2008).

⁹ 5 U.S.C. § 8101(2); see also *Michelle Salazar*, 54 ECAB 523 (2003).

¹⁰ OWCP's regulations, at 20 C.F.R. § 10.5(bb), defines subluxation to mean an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae which must be demonstrated on x-ray. See *Mary A. Ceglia*, 55 ECAB 626 (2004).

¹¹ See *Isabelle Mitchell*, 55 ECAB 623 (2004).

¹² *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *Conard Hightower*, 54 ECAB 796 (2003).

LEGAL PRECEDENT -- ISSUE 2

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.¹³ 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.¹⁴

ANALYSIS -- ISSUE 2

OWCP met its burden of proof to terminate authorization for medical benefits through the opinion of Dr. Collis, the second opinion examiner, who found that appellant had no further evidence of her accepted conditions. Dr. Collis explained that based on his physical examination she had no further signs of lumbar sprain, spinal stenosis or lumbosacral spondylosis. As his opinion is detailed and well rationalized, it constitutes the weight of the evidence and establishes that appellant has no further residuals of her accepted employment injury.¹⁵

On appeal, appellant's attorney argues that appellant benefits from continued medical treatment. The weight of the evidence, however, establishes that appellant has no further need for treatment due to her November 2010 employment injury.

LEGAL PRECEDENT -- ISSUE 3

Once OWCP properly terminates appellant's compensation benefits, the burden shifts to appellant to establish that he or she has continuing disability after that date related to his or her accepted injury.¹⁶ 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 medical and factual background, supporting such a causal relationship.¹⁷ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.¹⁸

ANALYSIS -- ISSUE 3

Given the Board's finding that OWCP properly relied upon the opinion of Dr. Collis in terminating compensation, effective November 9, 2011, the burden of proof shifted to appellant to establish that she remained entitled to compensation after that date.¹⁹ Appellant submitted a

¹³ *T.P.*, 58 ECAB 524 (2007); *Pamela K. Guesford*, 53 ECAB 727 (2002).

¹⁴ *Id.*

¹⁵ *See Manual Gill*, 52 ECAB 282 (2001); *Mary A. Lowe*, 52 ECAB 223 (2001).

¹⁶ *See I.J.*, 59 ECAB 408 (2008); *Franklin D. Haislah*, 52 ECAB 457 (2001).

¹⁷ *Id.*

¹⁸ *See Paul Foster*, 56 ECAB 208 (2004); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹⁹ *See Manual Gill*, *supra* note 15.

May 14, 2012 report from Dr. Roach; however, as previously discussed, he does not diagnose a subluxation by x-ray and thus his report does not constitute medical evidence under FECA.²⁰

On November 11, 2011 Dr. Casnellie related that appellant's March 31, 2011 motor vehicle accident increased her pain and symptoms but that she then returned to the "baseline pain levels" caused by her November 13, 2010 employment injury. He found a mild positive straight leg test on examination and diagnosed lumbar facet arthropathy, lumbar stenosis and low back pain. Dr. Casnellie advised that appellant was disabled from employment. He did not, however, specifically attribute the disability to the November 13, 2010 work injury or provide any rationale for his conclusions. Medical conclusions unsupported by rationale are of little probative value.²¹

On February 28, 2012 Dr. Casnellie recommended facet injections and found that appellant could resume sedentary employment. As he did not address the cause of any work limitations, his opinion is of diminished probative value.

On appeal, appellant's attorney argues that appellant is entitled to receive a schedule award based on Dr. Casnellie's March 19, 2012 impairment evaluation. The Board's jurisdiction is limited to reviewing final decisions of OWCP.²² OWCP has not issued a decision on a schedule award claim. Consequently, this issue is not before the Board at this time.

Counsel also contends that the May 14, 2012 opinion of Dr. Roach supports that appellant's work injury caused the injuries from her March 2011 motor vehicle accident to be more severe. As noted, however, Dr. Roach's opinion is not that of a physician under FECA as he did not diagnose a subluxation by x-ray and thus his reports do not constitute probative medical evidence.²³

LEGAL PRECEDENT -- ISSUE 4

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,²⁴ OWCP's regulations provide that a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.²⁵ To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant also must file his or her application for review within one year

²⁰ See *Kathryn Haggerty*, 45 ECAB 383 (1994).

²¹ See *Willa M. Frazier*, 55 ECAB 379 (2004); *Jimmy H. Duckett*, 52 ECAB 332 (2001).

²² 20 C.F.R. § 501.2(c).

²³ See *supra* note 20.

²⁴ *Supra* note 1. Section 8128(a) of FECA provides that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application."

²⁵ 20 C.F.R. § 10.606(b)(2).

of the date of that decision.²⁶ When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.²⁷

The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.²⁸ The Board also has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.²⁹

ANALYSIS -- ISSUE 4

On November 23, 2012 appellant requested reconsideration of OWCP's termination of her compensation. She argued that Dr. Collis failed to review medical records that she brought with her to the examination and did not perform a thorough examination. Appellant, however, previously raised these contentions before OWCP prior to its September 28, 2012 merit decision denying modification of its termination of compensation. Evidence or argument which repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.³⁰

Appellant additionally argued that she continued to have employment-related disability. Her lay opinion, however, is not relevant to the medical issue in this case, which can only be resolved through the submission of probative medical evidence from a physician.³¹

Appellant additionally maintained that the employing establishment erred in failing to allow her to return to work with restrictions. The Board's jurisdiction, however, is limited to reviewing final decisions of OWCP rather than actions of the employing establishment.³²

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP or submit relevant and pertinent new evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

²⁶ *Id.* at § 10.607(a).

²⁷ *Id.* at § 10.608(b).

²⁸ *F.R.*, 58 ECAB 607 (2007); *Arlesa Gibbs*, 53 ECAB 204 (2001).

²⁹ *P.C.*, 58 ECAB 405 (2007); *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

³⁰ *C.N.*, Docket No. 08-1569 (issued December 9, 2008); *Richard Yadron*, 57 ECAB 207 (2005).

³¹ *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *Gloria J. McPherson*, 51 ECAB 441 (2000).

³² 20 C.F.R. § 501.2(c).

CONCLUSION

The Board finds OWCP properly terminated appellant's compensation and authorization for medical benefits effective November 9, 2011 on the grounds that she had no further employment-related disability or need for medical treatment due to her November 13, 2010 employment injury. The Board further finds that she has not established that she had continuing disability after November 9, 2011 due to her accepted work injury and that OWCP properly denied her request to reopen her case for further review of the merits under section 8128.

ORDER

IT IS HEREBY ORDERED THAT the December 12 and September 28, 2012 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 9, 2013
Washington, DC

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

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

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