

**United States Department of Labor
Employees' Compensation Appeals Board**

S.G., Appellant)	
)	
and)	Docket No. 13-1698
)	Issued: March 13, 2014
U.S. POSTAL SERVICE, POST OFFICE,)	
New York, NY, Employer)	
)	

<i>Appearances:</i>	<i>Case Submitted on the Record</i>
<i>Alan J. Shapiro, Esq., for the appellant</i>	
<i>Office of Solicitor, for the Director</i>	

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 8, 2013 appellant, through her attorney, filed a timely appeal from the May 30, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). 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.

ISSUES

The issues are whether: (1) OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective January 16, 2011 on the grounds that she had no residuals of her May 21, 2010 work injury after that date; and (2) appellant met her burden of proof to establish that she had residuals of her May 21, 2010 work injury after January 16, 2011.

FACTUAL HISTORY

OWCP accepted that on May 21, 2010 appellant, then a 44-year-old letter carrier, sustained a lumbar radiculopathy and bilateral strains of her hips and thighs due to using force

¹ 5 U.S.C. §§ 8101-8193.

with both arms to secure a mail receptacle door which had fallen off its hinges. She stopped work on May 22, 2010 and initially received disability compensation on the daily rolls. In October 2010, appellant began to receive disability compensation on the periodic rolls.²

On May 25, 2010 appellant sought treatment for her condition from Dr. Gerald F. Gaughan, an attending physical medicine and rehabilitation physician,³ who noted that she was able to engage in lumbar flexion to 80 degrees and diagnosed right lumbar radiculopathy and bilateral hip strains, greater on the right.

The findings of June 9, 2010 magnetic resonance imaging (MRI) scan testing of appellant's back showed a very mild posterior disc bulge at L4-5 with normal disc signal and no significant disc space narrowing. August 30, 2010 MRI scan testing of her right knee revealed a small tear in the posterior horn of the medial meniscus, fatty degeneration of the anterior cruciate ligament without tear, mild infrapatellar bursitis and a suggestion of tendinitis and partial tearing of the distal quadriceps tendon.

In a November 1, 2010 report, Dr. Robert J. Orlandi, a Board-certified orthopedic surgeon serving as an OWCP referral physician, discussed appellant's May 21, 2010 work injury and reported findings on examination. He stated that she presented without gait disturbance but appeared wearing a right knee brace and left wrist brace and ambulated with a cane in her right hand. The examination of appellant's low back revealed lordosis to a normal 40 degrees and there was no paraspinal spasm. Appellant was able to toe and heel walk uneventfully, but she would only forward flex her right knee to 25 degrees (normal being 80 degrees). Dr. Orlandi indicated that right knee extension was to a normal 30 degrees and lateral bending to the left and right was possible to a normal 30 degrees. Appellant's patella reflexes were a normal 2+ as were the Achilles reflexes (in the L4 and S1 nerve distributions). The medial hamstring reflexes were also 2+ and the straight leg raising test was negative to a normal 80 degrees on the right and left side. Dr. Orlandi indicated that the femoral nerve stretch test and the synchronous hip/knee flexion maneuvers were negative for the right and left sensation and that motor function was intact in the lower extremities. Examination of each hip revealed no angular or rotary deformity or shortening of either leg. There was no area of localizing tenderness or swelling. Hip range of motion was a normal 140 degrees and flexion, internal rotation, external rotation and abduction also were normal. Dr. Orlandi stated that appellant's right knee had a normal range of motion (including 140 degrees of flexion) and that the patella tracked without crepitus in the supine and deep knee bend positions. Appellant had a negative Lachman maneuver and the meniscal signs for posterior horn tears of the menisci were negative. There was no localizing joint line or tibial tubercle tenderness.

Dr. Orlandi diagnosed "lumbar strain resolved but associated with a pronounced false restriction of lumbar forward flexion" and noted that appellant's low back injury was "associated with a normal lumbar MRI scan." He indicated that her history of injury mechanism did not suggest any significant trauma. Appellant was not currently experiencing a clinical lower lumbar radiculopathy as all three lower extremity reflexes were 2+ (L4, L5 and S1). Dr. Orlandi stated

² In December 2011, appellant also filed a claim alleging that she sustained a right knee injury due to preparing and delivering mail on May 13, 2010. This claim has not been accepted by OWCP.

³ Appellant had visited the Bronx Lebanon Hospital the prior day. X-ray testing of her right hip from that date showed no fracture or dislocation.

that the lack of uptake on the right knee MRI scan showed a preexistent, nontraumatic medial tear. He stated:

“[Appellant] does not have a disability which relates to May 21, 2010. Her lumbar MRI scan is normal and she has no muscular spasm and she certainly has no neurological deficit into either lower extremity to suggest a nerve root syndrome.

“[Appellant’s] unwillingness to forward flex beyond 25 degrees is contradicted by the straight leg raising test, which was negative with her knees extended as the calf circumferences were measured and as the heel reflexes were checked (both lumbar forward flexion from the erect position and the straight leg raising test tense the sciatic nerves which travel behind each hip and behind each knee).

“Relating to [appellant’s] low back and each hip and her right knee, [she] has no musculoskeletal disability and she can work without restriction. She is at maximum medical improvement. The prognosis is excellent. [Appellant] does not require a right knee arthroscopy or further conservative treatment for her low back, hip and leg complaints. There will be no need for additional diagnostic testing.”⁴

In a November 22, 2010 letter, OWCP advised appellant that it proposed to terminate her wage-loss compensation and medical benefits on the grounds that she no longer had residuals of her May 21, 2010 work injury. It informed her that Dr. Orlandi’s opinion showed that she ceased to have work-related residuals and represented the weight of the medical evidence. Appellant was provided an opportunity to submit evidence and argument challenging the proposed termination within 30 days of the letter.

Appellant submitted additional reports from 2010 of Dr. Gaughan and other attending physicians, including Dr. Albert Graziosa, a Board-certified orthopedic surgeon, and Dr. Teresella Gondola, a Board-certified neurologist. Some of these reports contained diagnoses of right knee dysfunction and right lumbar radiculopathy. With respect to the diagnosis of right lumbar radiculopathy, none of the reports contained a rationalized opinion relating the condition to the May 21, 2010 work injury.

In a January 10, 2011 decision, OWCP terminated appellant’s wage-loss compensation and medical benefits on the grounds that she no longer had residuals of her May 21, 2010 work injury. It relied on the opinion of Dr. Orlandi noting that the reports of attending physicians were not well rationalized.

In a May 3, 2011 report, Dr. Gaughan reported the findings of his examination and indicated that he did not agree with Dr. Orlandi’s assessment of appellant’s condition. He noted that she had tenderness and spasm over her lower thoracic spine, lumbar paraspinal muscles and right gluteal muscles. There was tenderness over appellant’s right sciatic notch, the lateral aspect of her right hip and thigh muscles bilaterally. Dr. Gaughan stated that her right knee joint range of motion was consistently limited and that her neurologic examination remained abnormal with

⁴ In an attached work restrictions form, Dr. Orlandi indicated that appellant did not have any work restrictions.

sensory defects and reflex deficits consistently noted in the right lower extremity. He diagnosed low back pain, abnormal L4-5 disc bulge, right lumbar radiculopathy, right knee dysfunction due to medial meniscus tear, distal quadriceps tear with bursitis and bilateral hip and thigh muscle strain, right worse than left. Dr. Gaughan stated:

“The conditions outlined in this report are the result of injuries which were sustained in the work accident which occurred on May 21, 2010. [Appellant] did not have back or knee pain or discomfort prior to this injury. She would not be expected to be symptomatic in these regions were not for the events of May 21, 2010 when she was injured at work. [Appellant] is disabled and unable to work causally related to these injuries.”

In an August 4, 2011 decision, an OWCP hearing representative set aside OWCP's January 10, 2011 decision and remanded the case to OWCP for further development. She found that the January 16, 2011 termination of appellant's wage-loss compensation and medical benefits was proper at the time it was effectuated, but that the receipt of the May 3, 2011 report of Dr. Gaughan after the termination action created a conflict in the medical opinion evidence with Dr. Orlandi regarding the existence of work-related residuals after January 16, 2011. Therefore, the case was remanded to OWCP in order to refer appellant to an impartial medical specialist.

In a November 8, 2012 report, Dr. Alan M. Crystal, a Board-certified orthopedic surgeon serving as an impartial medical specialist, discussed appellant's medical history, including the accepted conditions and reported the findings of his examination. He stated that, on examination, appellant did not have any objective findings of an L5 radiculopathy (weakness of ankle dorsiflexion, weakness of ankle inversion and aversion, weakness of hip abduction). Dr. Crystal noted that, while appellant's January 18, 2010 electromyogram (EMG) of the lower extremities had evidence of a right L5 radiculopathy, EMG of October 2, 2012 had zero evidence of a right L5 radiculopathy. Appellant did not have any objective findings of an S1 radiculopathy, such as weakness of ankle plantar flexion, weakness of hip extension, decreased Achilles reflex. Dr. Crystal also noted that her November 18, 2010 EMG had zero evidence of an S1 radiculopathy and indicated that she had a lumbar MRI scan performed on June 9, 2010 which did not show any nerve root compression from a lumbar disc. He indicated that his examination did not reveal any objective findings of a bilateral hip strain. Dr. Crystal concluded that, since appellant did not have any objective findings from a lumbar radiculopathy or bilateral hip/thigh strain, it was his opinion that she did not suffer from any residuals of the accepted May 21, 2010 work injury. Both the L5 lumbar radiculopathy and bilateral hip and thigh strains had resolved. With respect to appellant's right knee condition, Dr. Crystal indicated that there was no evidence that this condition was related to the May 2010 injury.⁵ He stated that she was capable of returning to full duty and posited that she did not require further medical intervention.

In a November 29, 2012 decision, OWCP denied appellant's claim for continuing compensation on the grounds that she did not meet her burden of proof to establish that she had residuals of her May 21, 2010 work injury on or after January 16, 2011. It found that the well rationalized November 18, 2012 report of Dr. Crystal, the impartial medical specialist,

⁵ Dr. Crystal discussed the mechanics of the May 21, 2010 incident and indicated that they were not competent to cause the observed right knee condition which was the result of a natural degenerative process.

represented the weight of the medical evidence with respect to this matter and showed that she did not have work-related residuals on or after January 16, 2011.

Appellant requested a telephone hearing with an OWCP hearing representative. During the March 14, 2013 hearing, counsel argued that Dr. Crystal improperly determined that she did not have a right leg radiculopathy.

The findings of March 1, 2013 EMG scan testing of appellant's legs showed a "normal lower extremity nerve conduction study" but also showed "evidence of right L5-S1 nerve root injury." In a March 20, 2013 report, Dr. Randall Erlich, an attending Board-certified orthopedic surgeon, diagnosed left knee exacerbation of previous intra-articular injury with possible meniscal/chondral involvement; right knee exacerbation of previous intra-articular injury with arthroscopically confirmed meniscal and chondral involvement; and lumbar spine chronic paravertebral traumatic myofasciitis. He stated, "Based upon the history given by the patient and the above objective findings, it can be stated with a reasonable degree of medical certainty that the accident that occurred on May 21, 2010 was the competent producing cause of the above-noted injury exacerbation."

In a May 30, 2013 decision, the hearing representative affirmed OWCP's November 29, 2012 decision. She found that the November 8, 2012 opinion of Dr. Crystal was well rationalized and that the March 2013 medical reports submitted by appellant did not contain a rationalized medical opinion showing that she still had a work-related condition.

LEGAL PRECEDENT -- ISSUE 1

Under FECA, once OWCP has accepted a claim it has the burden of justifying termination or modification of compensation benefits.⁶ OWCP may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁷ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁸

ANALYSIS -- ISSUE 1

OWCP accepted that on May 21, 2010 appellant sustained a lumbar radiculopathy and bilateral strains of her hips and thighs and it paid her wage-loss compensation. The Board finds that OWCP properly relied on the well-rationalized November 1, 2010 report of Dr. Orlandi, a Board-certified orthopedic surgeon, serving as an OWCP referral physician, to terminate appellant's wage-loss compensation and medical benefits effective January 16, 2011.

In his November 1, 2010 report, Dr. Orlandi noted that examination of appellant's low back revealed lordosis to a normal 40 degrees and there was no paraspinal spasm. Appellant's patella reflexes were a normal 2+ as were the Achilles reflexes (in the L4 and S1 nerve distributions). Dr. Orlandi indicated that the femoral nerve stretch test and the synchronous

⁶ *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

⁷ *Id.*

⁸ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

hip/knee flexion maneuvers were negative for the right and left sensation and that motor function was intact in the lower extremities. Examination of each hip revealed no angular or rotary deformity or shortening of either leg and there was no area of localizing tenderness or swelling. Dr. Orlandi diagnosed “lumbar strain resolved but associated with a pronounced false restriction of lumbar forward flexion” and indicated that appellant was not currently experiencing a clinical lower lumbar radiculopathy as all three lower extremity reflexes were 2+ (L4, L5 and S1). He also provided an opinion that her bilateral hip/thigh strains had resolved. Dr. Orlandi’s opinion was based on a complete and accurate factual and medical history and he provided medical rationale for his opinion by explaining that the findings on diagnostic testing and physical examination did not show that the accepted medical conditions still existed.

Appellant submitted additional reports from 2010 of attending physicians who provided diagnoses such as right knee dysfunction and right lumbar radiculopathy. With respect to the diagnosis of right lumbar radiculopathy, none of the reports contained a rationalized opinion relating the condition to the May 21, 2010 work injury. Moreover, it has not been accepted that appellant sustained a work-related right knee injury and the medical reports of record do not otherwise establish such injury.

For these reasons, OWCP properly terminated appellant’s compensation effective January 16, 2011.

LEGAL PRECEDENT -- ISSUE 2

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that she had a work-related residuals, which continued after termination of compensation benefits.⁹

Section 8123(a) of FECA provides in pertinent part: “If there was 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.”¹⁰ In situations where there exist opposing medical reports of virtually equal weight and rationale and the case was 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.¹¹

ANALYSIS -- ISSUE 2

After OWCP’s January 10, 2011 decision terminating appellant’s compensation effective January 16, 2011, appellant submitted additional medical evidence, which she felt showed that she was entitled to compensation after January 16, 2011 due to residuals of her May 21, 2010 work injury. Given that the Board has found that OWCP properly relied on the opinion of

⁹ *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

¹⁰ 5 U.S.C. § 8123(a).

¹¹ *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

Dr. Orlandi, the referral physician, in terminating her compensation effective January 16, 2011, the burden shifts to appellant to establish that she was entitled to compensation after that date.

OWCP properly determined that a conflict in the medical opinion evidence was created between Dr. Orlandi and Dr. Gaughan, an attending Board-certified orthopedic surgeon, on the issue of whether appellant continued to have residuals of her May 21, 2010 work injury on or after January 16, 2011.¹² In order to resolve the conflict, it properly referred her, pursuant to section 8123(a) of FECA, to Dr. Crystal, a Board-certified orthopedic surgeon, for an impartial medical examination and an opinion on the matter.¹³

The Board finds that the weight of the medical evidence was represented by the thorough, well-rationalized opinion of Dr. Crystal, the impartial medical specialist selected to resolve the conflict in the medical opinion.¹⁴ The November 8, 2012 report of Dr. Crystal establishes that appellant had no residuals of her May 21, 2010 work injury on or after January 16, 2011.

In his November 8, 2012 report, Dr. Crystal stated that, on examination, appellant did not have any objective findings of an L5 radiculopathy such as weakness of ankle dorsiflexion, weakness of ankle inversion and aversion, weakness of hip abduction. While appellant's January 18, 2010 EMG of the lower extremities had evidence of a right L5 radiculopathy, the EMG of October 2, 2012 had zero evidence of a right L5 radiculopathy. She did not have any objective findings of an S1 radiculopathy such as weakness of ankle plantar flexion, weakness of hip extension, decreased Achilles reflex. Dr. Crystal indicated that his examination did not reveal any objective findings of a bilateral hip/thigh strain. He concluded that both the L5 lumbar radiculopathy and bilateral hip and thigh strains had resolved.

The Board has reviewed the opinion of Dr. Crystal and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Crystal provided a thorough factual and medical history and accurately summarized the relevant medical evidence.¹⁵ He provided medical rationale for his opinion by explaining that both the diagnostic test results and findings on physical examination did not support the existence of the accepted conditions, lumbar radiculopathy and bilateral strains of the hips and thighs. Dr. Crystal also noted that appellant's continuing problems could be explained by nonwork conditions, such as her degenerative right knee condition.¹⁶

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 In an October 1, 2010 report, Dr. Orlandi found that the residuals of appellant's May 21, 2010 work injury had resolved. In contrast, Dr. Gaughan found on May 3, 2011 that appellant continued to have work-related residuals.

¹³ See *supra* note 10 and accompanying text.

¹⁴ See *supra* note 11 and accompanying text.

¹⁵ See *Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

¹⁶ Appellant submitted the findings of March 1, 2013 EMG testing of his legs and a March 20, 2013 report of Dr. Erlich, an attending Board-certified orthopedic surgeon. Although Dr. Erlich implicated the May 21, 2010 work incident, he did not provide a rationalized opinion that appellant had residuals of a work-related lumbar radiculopathy or bilateral hip/thigh strains.

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective January 16, 2011 on the grounds that she had no residuals of her May 21, 2010 work injury after that date. The Board further finds that she did not meet her burden of proof to establish that she had residuals of her May 21, 2010 work injury on or after January 16, 2011.

ORDER

IT IS HEREBY ORDERED THAT the May 30, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 13, 2014
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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