

FACTUAL HISTORY

OWCP accepted that on April 4, 2011 appellant, then a 57-year-old mail clerk, sustained a back injury as a result of loading machines in the performance of duty. Appellant's claim was accepted for lumbar sprain and lumbar radiculitis. She did not return to work and received disability compensation, while undergoing medical treatments and physical therapy.

On April 17, 2012 OWCP referred appellant, together with a statement of accepted facts and the medical record, to Dr. Willie Thompson, a Board-certified orthopedic surgeon, for a second opinion examination to determine the extent of her continuing employment-related residuals and disability. In a June 14, 2012 report, Dr. Thompson reviewed the statement of accepted facts and the medical record. He provided an accurate history of the April 4, 2011 employment injury and reviewed appellant's medical treatment. Upon examination of the lumbar spine, Dr. Thompson observed no tenderness, paraspinal muscle spasms or motor or sensory deficits. Range of motion was full. Straight leg raise testing was negative bilaterally. Dr. Thompson reported that deep tendon reflexes were intact and equal bilaterally. Manual muscle testing revealed strength of 5/5. Dr. Thompson stated that the examination was completely within normal limits.

Dr. Thompson reviewed appellant's diagnostic reports. He stated that an April 29, 2011 magnetic resonance imaging (MRI) scan examination of the lumbar spine revealed some moderate degenerative changes. A March 12, 2012 MRI scan of the cervical spine also demonstrated a C5-6 disc osteophyte complex with cord impingement. Dr. Thompson diagnosed a soft tissue sprain/strain injury to the lower back as a result of the April 4, 2011 employment injury. He opined that appellant was capable of returning to work without restrictions. Dr. Thompson concluded that there was no objective evidence of any ongoing pathology which could be related to the April 4, 2011 employment injury.

In various reports dated May 2 to September 13, 2012, Dr. Daniel Ignacio, Board-certified in physical medicine and rehabilitation, noted that appellant had been under his care since April 4, 2011 for a lumbar injury at work. He stated that she continued to experience increasing and severe pain along the hips and lower back, stiffness along the back and continuing paresthesia of numbness and weakness along her legs. Dr. Ignacio related that an MRI scan of the lumbar spine demonstrated lumbar disc narrowing and lumbar disc protrusion. Upon examination of the lumbar spine, he observed significant restriction of motion along the lumbar muscles. Dr. Ignacio also reported spasm and tenderness along L2, L3, L4 and L5 interspinous ligaments and paraspinal muscles. Straight leg raise testing was positive to 70 degrees bilaterally. Examination of the cervical spine demonstrated restricted motion and continuing tenderness. Examination of the lower extremities revealed limited motions along the legs due to pain and severe hypoesthesia and weakness in both legs. Dr. Ignacio diagnosed progressive lumbar disc syndrome, chronic lumbar radiculopathy, chronic thoracolumbar strain and chronic pain syndrome. He recommended that appellant continue with conservative care, including spinal injections, physical therapy, aquatic program and pain medication.

In attending physician reports dated May 2, 2012 to March 4, 2013, Dr. Ignacio noted that appellant sustained a lumbar injury at work on April 4, 2011. He diagnosed lumbar strain, lumbar disc syndrome and L4-5 disc herniation as confirmed by an MRI scan. Dr. Ignacio

indicated that appellant was disabled from August 1, 2012 to March 31, 2013. He reported that she needed continued medical care and conservative treatment.

In a May 23, 2012 MRI scan of the lumbar spine, Dr. Paul L. Weiner, a Board-certified diagnostic radiologist, noted appellant's complaints of low back pain extending into her right lower extremity. He opined that she had central and right lateral recess stenosis L3-4 and L4-5, most marked at L4-5, retrolisthesis L2-3 and L3-4, left paracentral protrusions T11-12 and T12-L1, central protrusions at L1-2 and L3-4, broad-based protrusions L2-3, L4-5 and L5-S1 and L5 degrees levoscoliosis.

On September 28, 2012 OWCP issued a notice of proposed termination of appellant's wage-loss and compensation benefits based on Dr. Thompson's June 14, 2012 medical report.² Appellant was advised that she had 30 days to submit additional relevant evidence or argument if she disagreed with the proposed action.

In a handwritten letter received on October 23, 2012, appellant noted that she was enclosing another report by Dr. Ignacio in response to the proposed termination.

In an October 15, 2012 report, Dr. Ignacio accurately described the April 4, 2011 employment injury and appellant's medical treatment. He noted that an April 29, 2011 MRI scan of the lumbar spine showed lumbar disc abnormality with narrowing of the lumbar disc and lumbar disc protrusion at the L4-5 level. Dr. Ignacio also related that April 4, 2011 and April 26, 2012 electromyography (EMG) and nerve conduction velocity (NCV) studies showed lumbar radiculopathy and neuritis at the L5-S1 level. Upon examination of the thoracolumbar spine, he observed spasm on motion restricted to flexion of 70 degrees and tenderness along the paraspinal muscles and sciatic notches. Straight leg raise testing was positive to 70 degrees on both sides. Examination of the lower extremities revealed hypoesthesia and weakness of the legs. Strength was 4/5 with diminished right ankle jerk.

Dr. Ignacio diagnosed chronic lumbar strain, chronic lumbar radiculopathy, chronic lumbar disc syndrome and chronic thoracic strain syndrome. He stated that due to appellant's complex medical conditions and spinal injury she was not able to return to work. Dr. Ignacio contended that Dr. Thompson disregarded the objective findings, such as the electrodiagnostic/EMG examination and MRI scan reports which demonstrated appellant's defect along the lumbar spine. He concluded that appellant sustained a significant strain to the thoracolumbar spine and to the lumbar disc indicative of an increased muscular and disc injury, which was now causing a clinically progressive neuritis and radiculitis, which required continued medical treatment and caused her disability.

OWCP determined that there was a conflict in medical opinion between Dr. Ignacio, appellant's treating physician, and Dr. Thompson, an OWCP referral physician, as to whether appellant had any continuing residuals or disability due to her accepted employment injuries. It

² OWCP found that Dr. Thompson's report represented the weight of medical evidence as he provided objective findings and a comprehensive, well-reasoned medical report. It noted that Dr. Ignacio continually reported no change in appellant's diagnosis or condition and failed to provide any objective findings to support his opinion that appellant remained totally disabled.

referred appellant, together with a statement of accepted facts and the medical record, to Dr. David Dorin, a Board-certified orthopedic surgeon, for an impartial medical examination.

In a February 22, 2013 report, Dr. Dorin reviewed the record, including the statement of accepted facts and provided an accurate history of injury. He noted that an April 29, 2011 MRI scan of the lumbar spine demonstrated significant narrowing and lumbar disc protrusion at the L4-5 and L5-S1 levels, narrowing and lumbar disc bulging at the L3-4 and L2-3 and flattening of the ventral portion of the thecal sac. A September 20, 2011 NCV study also revealed bilateral L5, right S1 radiculopathy. Dr. Dorin stated that diagnostic studies were indicative of structural preexisting significant abnormalities of the lumbar spine. He further noted that a review of Dr. Ignacio's reports in 2011 indicated no evidence of improvement in appellant's symptoms related to her lower back and extremity.

Upon examination, Dr. Dorin observed reasonable range of motion of the lumbar spine and pain in the lumbar area. He noted some issues with a numbing sensation to the right lower extremity, but stated that it was not a typical radiculopathy to the lower extremities, right or left. Straight leg raise testing while sitting and in the supine position was about 70 degrees with no typical exacerbation of pain in the lumbar spine. Dr. Dorin reported that muscular structures in the lower extremities had satisfactory strength against resistance with no evidence of weakness. He opined that based on his review of appellant's different physicians, her symptoms indicated that she sustained a sprain of the lower back involving the muscular structures of the lumbar spine on April 4, 2011.

Dr. Dorin explained that the multiple x-ray and MRI scan reports that he reviewed demonstrated that appellant had a significant, preexisting significant abnormalities of the lumbar spine. He also noted that she had facet arthropathy at multiple levels in the lower segments of the lumbar spine, several bulging discs at L3-4, L4-5 and L5-S1 protruding into the spinal canal and narrowing of the neural foramina at several levels on the right and left sides. Dr. Dorin explained that these conditions could not be produced by a simple sprain of the lumbar spine on April 4, 2011. He opined that these conditions were preexisting and unrelated to appellant's work activities. Dr. Dorin stated that she was able to work in a sedentary nature where she could alternate four hours standing and four hours sitting with no lifting over 10 pounds. He noted that appellant's lumbar sprain healed a long time ago and there was no indication that continuing medical treatment, such as physical therapy, enhancement cocktails or repeat thermal testing would improve the pain.

In reports dated March 14 to May 7, 2013, Dr. Ignacio stated that appellant continued to suffer from chronic pain of the back and right leg as a result of the April 4, 2011 employment injury. He reviewed the medical treatment she received and various diagnostic reports. Upon examination of the lumbar spine, Dr. Ignacio observed flexion to 70 degrees and limited motion with complaint of pain on extremes. He also reported spasm and tenderness to palpation along T6, T7, T8, T9, T10 and T11 and along L2-3, L3-4 and L5-S1 interspinous ligaments and paraspinal muscles. Straight leg raise testing was positive to 70 degrees on the right and 80 degrees on the left. Examination of the cervical spine demonstrated restricted motion and continuing tenderness. Examination of the lower extremities revealed moderate restricted motion with hypoesthesia and severe weakness. Dr. Ignacio diagnosed post-traumatic lumbar spinal stenosis, chronic lumbar disc syndrome, chronic lumbar radiculitis, chronic thoracolumbar

strain and chronic pain syndrome. He recommended that appellant continue with conservative pain regimen. Dr. Ignacio reported that she remained unable to return to work due to her medical conditions. In attending physician's reports dated March 14 to October 31, 2013, he indicated that appellant was disabled from April 1 to November 30, 2013 and needed continued medical care.

In a decision dated May 29, 2013, OWCP finalized the termination of appellant's medical and wage-loss benefits effective May 29, 2013. It found that Dr. Dorin's February 22, 2013 report represented the weight of the medical evidence in establishing that appellant's accepted conditions had ceased and that she no longer had any residuals or disability causally related to her accepted April 4, 2011 employment injuries.

On July 10, 2013 OWCP received appellant's request for an oral hearing, which was held on November 21, 2013. Appellant's husband and daughter were present. Appellant described the April 4, 2011 employment injury and stated that she did not have any other injuries before or after the incident. Dr. Ignacio, appellant's treating physician, also presented testimony. He disagreed with Dr. Dorin's opinion that appellant's lumbar conditions were preexisting. Dr. Ignacio pointed out that appellant was very healthy and able to work prior to the April 4, 2011 employment injury. He also stated that the diagnostic reports demonstrate a traumatic injury, not a degenerative condition. Dr. Ignacio further alleged that objective findings confirmed that appellant continued to suffer residuals of her accepted back conditions. He stated that she had significant damage to the lumbar disc, a significant strain of the lower ligaments and a lumbar disc injury causing significant damage to the nerve, which caused nerve entrapment. Dr. Ignacio pointed out that at least two MRI scan reports and an EMG examination demonstrated significant nerve damage to the right L5, S1 nerve roots and a significant disc injury of the L4-5 and L5-S1. He reported that appellant needed ongoing treatment for pain management and physical therapy.

In reports dated June 12 and 28, 2013, Dr. Ignacio provided an accurate history of the April 4, 2011 employment injury and examination findings similar to his previous reports. He diagnosed chronic lumbar strain syndrome and aggravated lumbar disc syndrome with lumbar neuritis. Dr. Ignacio stated that appellant needed continued medical treatment for her conditions and remained permanently and totally disabled to return to work. He noted that he reviewed OWCP's termination letter and Dr. Dorin's report and disagreed with the findings. Dr. Ignacio alleged that Dr. Dorin failed to notice the electrodiagnostic and EMG studies which confirmed appellant's accepted condition of lumbar neuritis sustained on April 4, 2011. He contended that the MRI scan confirmed the injury to the lumbar disc and therefore, appellant's aggravated lumbar disc syndrome with lumbar neuritis was causally related to the April 4, 2011 employment injury.

Dr. Ignacio stated that appellant sustained an acute injury to the lumbar spine resulting in acute lumbar strain, aggravated lumbar disc syndrome with lumbar neuritis. He explained that "the mechanism of injury [was] that of significant flexion-rotation strain to the lumbar spine causing significant damage to the bio-ligamentous support to the lumbar spine and a significant strain to the lumbar disc causing significant lumbar disc injury at the L4-5 level and a lumbar neuritis which had been confirmed again by the diagnostic study outlined above." Dr. Ignacio concluded that appellant's medical conditions had been confirmed by the objective examinations,

MRI scan, electrodiagnostic/electromyography examinations and have required continuing medical treatment outlined above. He stated that she was not able to perform her job due to the April 4, 2011 injuries and was totally and permanently disabled. Dr. Ignacio continued to submit medical reports with similar examination findings regarding his treatment of appellant's back complaints.

By decision dated February 4, 2014, an OWCP hearing representative affirmed the May 29, 2013 termination decision, finding that the medical evidence established that appellant's accepted conditions had ceased and that she no longer had any residuals or disability causally related to her accepted employment injuries.³

LEGAL PRECEDENT

According to FECA, once OWCP accepts a claim and pays compensation, it has the burden of justifying termination or modification of an employee's benefits.⁴ OWCP may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.⁵ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶ The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁷ 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.⁸

Section 8123(a) of FECA provides that if there is a disagreement between the physician making the examination for the United States and the physician of an employee, the Secretary shall appoint a third physician (known as a referee physician or impartial medical specialist) who shall make an examination.⁹

³ OWCP's hearing representative determined that the additional medical reports and hearing testimony were insufficient to overcome the special weight of medical opinion afforded to Dr. Dorin as the referee physician.

⁴ *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁵ *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

⁶ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁷ *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005); *A.P.*, Docket No. 08-1822 (issued August 5, 2009).

⁸ *A.P.*, Docket No. 08-1822 (issued August 5, 2009); *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002).

⁹ 5 U.S.C. § 8123(a); *see R.S.*, Docket No. 10-1704 (issued May 13, 2011); *S.T.*, Docket No. 08-1675 (issued May 4, 2009).

ANALYSIS

OWCP found that a conflict in medical opinion existed between appellant's physician, and the second opinion examiner Dr. Ignacio, appellant's physician, who found that she continued to suffer residuals of her work-related injuries and remained disabled. Dr. Thompson, the second opinion examiner, found that her work-related injuries had resolved and that appellant could return to full duty. It referred appellant to Dr. Dorin for an impartial medical examination to resolve the conflict in medical opinion. In a February 22, 2013 report, Dr. Dorin determined that there was no objective medical evidence to establish that appellant had residuals of her accepted conditions. OWCP determined that his opinion constituted the weight of the evidence and thereafter terminated appellant's entitlement to disability compensation.

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's disability compensation and medical benefits because the medical evidence does not establish that her work-related injuries had resolved.

OWCP terminated appellant's compensation benefits based on Dr. Dorin's February 22, 2013 report. Dr. Dorin provided an accurate history of the April 4, 2011 employment injury and conducted an examination. He observed reasonable range of motion of the lumbar spine and pain in the lumbar area. Straight leg raising testing while sitting and in the supine position was about 70 degrees with no typical exacerbation of pain in the lumbar spine. Dr. Dorin reported that muscular structures in the lower extremities had satisfactory strength with no evidence of weakness. He concluded that appellant was capable of sedentary work. The Board finds that as she was employed as a mail clerk on the date of injury, a medical opinion that she could return to sedentary work does not establish that disability has ceased.¹⁰ The Board finds that Dr. Dorin did not conclude with certainty that appellant was capable of returning to work. Dr. Dorin's opinion that appellant is capable of sedentary work is insufficient to justify the termination of appellant's wage-loss compensation benefits.

Regarding whether appellant continued to suffer residuals of her accepted conditions, Dr. Dorin explained that the multiple x-ray and MRI scan reports demonstrated that appellant had a significant preexistent scoliosis or curvature of the lumbar spine of about 10 to 15 degrees to the left side and significant narrowing of the intervertebral spaces from L2-3, L3-4, L4-5 and L5-S1, which was indicative of discogenic disc disease and arthrosis. He stated that these conditions could not be produced by a simple sprain of the lumbar spine on April 4, 2011. Dr. Dorin opined that appellant's conditions were preexisting and unrelated to her work activities. He concluded that her lumbar sprain healed a long time ago and there was no indication that continuing medical treatment would improve her pain. The Board finds that, although Dr. Dorin provided an opinion regarding appellant's lumbar sprain, he did not affirmatively conclude that appellant's lumbar neuritis and radiculitis had resolved. Dr. Dorin's opinion is inconclusive and incomplete regarding whether appellant continued to suffer residuals of all her accepted April 4, 2011 lumbar conditions. He also stated that she had a preexisting condition. Dr. Dorin did not, however, provide any medical rationale for his conclusion. He did not reference any diagnostic reports or medical reports which demonstrated that appellant had a

¹⁰ See *T.C.*, Docket No. 13-441 (issued June 4, 2013).

preexisting lumbar condition. On the other hand, Dr. Dorin referenced various diagnostic reports which revealed that she had a lumbar disc injury and merely concluded that it was a preexisting condition. The Board has found that medical conclusions unsupported by medical rationale are of little probative value.¹¹ Because Dr. Dorin did not affirmatively conclude that all of appellant's accepted lumbar conditions had resolved, his report is insufficient to justify termination of her medical benefits.

In assessing medical evidence, the weight of medical evidence is determined by its reliability, its probative value and its convincing quality. The factors that comprise the evaluation of medical opinion evidence include the opportunity for and thoroughness of physical examination, the accuracy or completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.¹² In this case, the Board finds that the medical evidence and rationale supporting Dr. Dorin's opinion is lacking. Accordingly, Dr. Dorin's opinion has diminished probative value and is not entitled to special weight in resolving the conflict between Drs. Ignacio and Thompson. As that conflict remains unresolved, the Board will reverse OWCP's February 4, 2014 decision and will remand the case for a proper reinstatement of compensation benefits.

CONCLUSION

The Board finds that OWCP did not meet its burden of proof to justify termination of appellant's disability compensation and medical benefits.

¹¹ *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

¹² *Nicolette R. Kelstrom*, 54 ECAB 570 (2003); *Anna M. Delaney*, 53 ECAB 384 (2002).

ORDER

IT IS HEREBY ORDERED THAT the February 4, 2014 decision of the Office of Workers' Compensation Programs is reversed.

Issued: September 18, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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