

FACTUAL HISTORY

OWCP accepted that appellant, then a 38-year-old postal clerk, sustained spinal subluxations at C1, C4, and C5, lumbar subluxations at L2 and L4, and a left sacroiliac subluxation due to factors of her federal employment, including bending, lifting, pushing, and pulling mail. By decision dated February 25, 2005, it accepted that appellant sustained a recurrence of total disability on January 31, 2005. Appellant was placed on the periodic rolls and received appropriate medical and wage-loss compensation benefits. The employing establishment accepted her application for disability retirement effective July 20, 2005.

On November 12, 2012 Dr. James Lukes, appellant's chiropractor, diagnosed subluxation of C5 with subluxation of multiple cervical levels and cervical disc displacement, subluxation of L4 with lumbar disc degeneration, sacroiliac somatic dysfunction, and myofascial pain syndrome.

OWCP referred appellant to Dr. Jonathan Black, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine the nature and extent of her employment-related conditions. In his December 11, 2012 report, Dr. Black conducted a physical examination and reviewed a statement of accepted facts, history of the injury and the medical evidence of record. He found that appellant had reached maximum medical improvement and concluded that her accepted conditions had ceased.

OWCP referred appellant to Dr. Melton for an impartial medical examination to resolve the conflict in medical opinion between Drs. Lukes and Black on the issue of whether she continued to have any continuing disability or residuals as a result of the accepted employment conditions. In his May 8, 2013 report, Dr. Melton reviewed a statement of accepted facts and the medical evidence of record. He found that appellant was ambulatory, walking with a normal gait, not using any type of cane or crutch. Appellant was not wearing any type of collar, corset, brace, or other apparatus and had no problem getting up and down from a seated position or from the examining table without help. In an August 5, 2013 addendum report, Dr. Melton indicated that he had no objective findings of any cervical or lumbar subluxation and "found nothing to indicate spinal subluxation at C1, C4, C5 or lumbar subluxation at L2 or L4 or left sacroiliac subluxation." He opined that appellant was not capable of returning to full-time work, "assum[ing] that the opinion was based on her returning to her usual job activities and not working at a sedentary position only."

In reports dated June 6 through 26, 2013, Dr. Lukes reiterated his diagnoses.

On May 23, 2013 Dr. Vrajlal Rajyaguru, a Board-certified anesthesiologist, diagnosed cervical facet syndrome, cervical disc disease, and myofascial pain syndrome.

In reports dated August 7 through September 4, 2013 Dr. Raymond Fernandez, a chiropractor, diagnosed subluxation at C5, subluxation at multiple cervical vertebrae, displacement of cervical intervertebral disc without myelopathy, lumbar subluxation at L4, lumbar intervertebral disc degeneration, sacroiliac segmental dysfunction, and myofascial pain syndrome.

By letter dated September 23, 2013, OWCP notified appellant that it proposed to terminate her compensation benefits on the basis that her accepted conditions had resolved, relying on Dr. Melton's reports dated May 8 and August 5, 2013 as the weight of the medical evidence. It afforded her 30 days to submit additional evidence or argument in disagreement with the proposed action.

Appellant submitted reports dated September 12 through November 1, 2013 from Dr. Fernandez who reiterated his diagnoses. On September 18, 2013 Dr. Fernandez indicated that appellant continued to require periodic conservative chiropractic manipulative therapy for the work-related injuries of 2004. He opined that appellant's conditions were "still medically present and disabling."

By decision dated November 15, 2013, OWCP terminated appellant's wage-loss and medical compensation benefits effective November 17, 2013. It found the weight of the medical evidence was represented by Dr. Melton.

On December 3, 2013 appellant, through counsel, requested an oral hearing before an OWCP hearing representative. He submitted two magnetic resonance imaging (MRI) scans dated February 7, 2014 demonstrating a disc herniation at C5-6 and bulging discs at L3-4 and L4-5. Appellant also submitted reports dated February 3 through June 2, 2014 from Dr. Robert Reppy, an osteopath specializing in family medicine, who diagnosed lumbar spondylosis, lumbar disc disease with bulging discs at L3-S1, and cervical disc disease with herniated discs at C5-7.

A telephonic oral hearing was held before an OWCP hearing representative on June 12, 2014.

Appellant, through counsel, submitted functional capacity evaluations dated July 3 and August 5, 2014.

In an August 4, 2014 report, Dr. Reppy indicated that appellant had no new trauma and opined that she had been suffering from neck and back pain since 2004 due to lifting bundles of catalogs and magazines at work weighing up to 45 pounds each.

By decision dated August 29, 2014, an OWCP hearing representative affirmed the November 15, 2013 termination decision finding that the weight of the medical evidence was represented by Dr. Melton.²

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.³ After it has determined that an

² On July 4, 2014 appellant, through counsel, requested an expansion of her claim. By decision dated August 1, 2014, OWCP denied expansion of the claim on the basis that the medical evidence was insufficient to establish causal relationship. Appellant disagreed and requested an oral hearing. By decision dated February 19, 2015, an OWCP hearing representative vacated the prior decision and remanded the case for further development and a *de novo* decision on the requested claim expansion.

³ See *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.⁴ OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁶ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.⁷

Section 8123(a) of FECA provides in pertinent part: 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.⁸ Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background must be given special weight.⁹

ANALYSIS

The Board finds that OWCP did not meet its burden to justify termination of benefits.

On appeal, counsel contends that the opinion of Dr. Melton lacked probative value and was not sufficient to terminate appellant's compensation benefits. It is OWCP that bears the burden to justify modification or termination of benefits.¹⁰

OWCP based its decision to terminate appellant's benefits on reports dated May 8 and August 5, 2013 from Dr. Melton, the impartial medical examiner. Dr. Melton conducted a physical examination and reviewed appellant's medical history. He found that appellant was ambulatory, walking with a normal gait, not using any type of cane or crutch. Appellant was not wearing any type of collar, corset, brace, or other apparatus and had no problem getting up and down from a seated position or from the examining table without help. In his August 5, 2013 addendum report, Dr. Melton indicated that he had no objective findings of any cervical or lumbar subluxation and "found nothing to indicate spinal subluxation at C1, C4, C5 or lumbar subluxation at L2 or L4 or left sacroiliac subluxation." He opined that appellant was not

⁴ See *I.J.*, 59 ECAB 524 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

⁵ See *J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

⁶ See *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁷ See *James F. Weikel*, 54 ECAB 660 (2003).

⁸ 5 U.S.C. § 8123(a). See *R.C.*, 58 ECAB 238 (2006); *Darlene R. Kennedy*, 57 ECAB 414 (2006).

⁹ See *V.G.*, 59 ECAB 635 (2008); *Sharyn D. Bannick*, 54 ECAB 537 (2003); *Gary R. Sieber*, 46 ECAB 215 (1994).

¹⁰ See *Curtis Hall*, 45 ECAB 316 (1994).

capable of returning to full-time work, “assum[ing] that the opinion was based on her returning to her usual job activities and not working at a sedentary position only.”

In his reports, Dr. Reppy diagnosed lumbar spondylosis, lumbar disc disease with bulging discs at L3-S1, and cervical disc disease with herniated discs at C5-7. He indicated that appellant had no new trauma and opined that she had been suffering from neck and back pain since 2004 due to lifting bundles of catalogs and magazines at work weighing up to 45 pounds each.

Dr. Fernandez, appellant’s chiropractor, diagnosed subluxation at C5 and multiple cervical vertebrae. He indicated that appellant continued to require periodic conservative chiropractic manipulative therapy for the work-related injuries of 2004 and opined that her conditions were “still medically present and disabling.”

The Board finds that OWCP did not meet its burden of proof to terminate appellant’s compensation benefits because it failed to obtain a supplemental report from Dr. Melton which evaluates some of the reports of Drs. Reppy and Fernandez. The Board notes that the reports and treatment records of Drs. Reppy and Fernandez were of record prior to OWCP’s hearing representative’s August 29, 2014 termination decision. The Board finds that where OWCP received the reports from Dr. Reppy and Dr. Fernandez, it should have submitted them to Dr. Melton, the impartial medical examiner, and requested a supplemental report before issuing a final decision on appellant’s entitlement. As OWCP failed to base its decision on a resolution of the medical opinion evidence, the Board finds that it did not meet its burden of proof to terminate appellant’s wage-loss and medical compensation benefits. A supplemental report from the impartial medical specialist is warranted. Accordingly, OWCP’s decision to terminate appellant’s compensation benefits shall be reversed.

CONCLUSION

The Board finds that OWCP did not meet its burden of proof to terminate appellant’s compensation benefits effective November 17, 2013. Further development of the medical evidence is warranted.

ORDER

IT IS HEREBY ORDERED THAT the August 29, 2014 decision of the Office of Workers' Compensation Programs is reversed and the case remanded for further action consistent with this opinion of the Board.

Issued: April 7, 2015
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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

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