

On July 15, 1987 appellant, then a 33-year-old part-time flexible clerk,² filed a traumatic injury claim alleging that on July 13, 1987 she injured her back, shoulders, and neck while lifting two packs over her head. OWCP accepted the claim for acute lumbar strain and lumbago, and placed her on the periodic rolls for temporary total disability effective December 23, 1987.³ On March 4, 2003 it expanded the claim to include aggravation of atypical affective disorder, right knee contusion, and right knee soft tissue injury.

After placing appellant on the periodic rolls for temporary total disability, OWCP received medical reports from her treating physicians confirming that she remained totally disabled. On February 10, 1988 Dr. Ramon Libarnes, a Board-certified physiatrist, reported that a November 19, 1987 magnetic resonance imaging (MRI) scan revealed a mild L5-S1 disc bulge. He opined that, based on appellant's pain complaints, the history of the injury, her inability to sit for prolonged periods of time, and physical examination that she had sustained a chronic back strain. The record contains further medical evidence supporting her disability from Dr. Libarnes, as well as reports from Dr. Neil S. Lava, a Board-certified neurologist, Dr. George Forrest, a treating physician and Board-certified internist specializing in spinal cord injury medicine and physical medicine and rehabilitation, and Dr. Marion E. Murphy, a Board-certified physiatrist. Dr. Lava submitted several reports and work restriction forms finding appellant totally disabled due to chronic back pain as a result of her lumbar/lumbosacral sprain. Similarly, Dr. Forrest concluded in various reports, attending physician reports (Form CA-20), and work restriction reports (Form OWCP-5c) that she was totally disabled as a result of her chronic pain due to the lumbar strain and her inability to sit for extended periods of time.

An appeal had been filed from an October 31, 2002 OWCP decision, which denied authorization of payment for the installation of a hot tub at appellant's home in addition to a self-adjusting mattress. The Board on August 27, 2003 remanded the case as the record was incomplete with respect to the denial of appellant's request for the items. The case was remanded for reconstruction and proper assemblage of the case record and issuance of an appropriate decision.⁴

In an October 14, 2005 decision, the Board affirmed a December 17, 2004 OWCP decision denying payment for the installation of a hot tub at appellant's home and a self-adjusting mattress.⁵

Appellant continued on the periodic rolls and submitted annual medical reports. In a January 3, 2013 report, Dr. Forrest, noted the history of appellant's injury and diagnosed chronic pain, lactase deficiency, and deviated nasal septum. Dr. Forrest noted that she had "little tolerance for sitting" including "difficulty sitting through dinner." A review of a lumbar spine

² The form has the job of "MPLSM operator (keyer clerk)" crossed out and "PTF" written above.

³ The record also contains a November 15, 1980 traumatic injury claim where appellant alleged that she injured her back that day while trying to lift a sack of mail from a tub. Appellant's occupation was listed as casual mail handler.

⁴ *Order Remanding Case*, Docket No. 03-1598 (issued August 27, 2003).

⁵ Docket No, 05-0705 (issued October 14, 2005).

MRI scan revealed left L4-5 paracentral disc protrusion, L5-S1 arthritic facet joint changes, and significant L5-S1 degenerative changes. A physical examination revealed grade 2 reflexes at ankles, knee, brachioradialis, triceps, and biceps and very little tolerance for forward flexion or extension of the lumbar spine. Dr. Forrest observed that appellant continued to experience chronic back pain which limited her functional ability and rendered her totally disabled from working.

On March 19, 2013 OWCP referred appellant to Dr. Edwin E. Mohler, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine her current medical condition, ability to return to her date-of-injury job, and work restrictions. The statement of accepted facts (SOAF) noted the accepted conditions as acute lumbar strain and right knee contusion. The SOAF listed appellant's date-of-injury position as part-time flexible clerk working an average of 26 hours per week.

In an April 4, 2013 report, Dr. Mohler detailed the medical evidence reviewed and conducted a physical examination.⁶ He noted that according to the SOAF OWCP accepted the conditions of acute lumbar strain and right knee contusion. A physical examination revealed no palpable spinal muscle spasm, no contraction, a negative Trendelburg sign, and complaints of pain on motion. Dr. Mohler reported negative straight leg raising for radiculopathy and sciatica and positive Waddell sign for straight leg raising seated versus supine. Diagnoses included status post lumbar strain with chronic low back pain syndrome and resolved status post right knee contusion. Dr. Mohler opined that the accepted conditions of acute lumbar strain and right knee contusion had resolved based on the objective evidence reviewed and his clinical findings. He also noted that typically a lumbar strain would resolve within 6 to 12 weeks. Dr. Mohler concluded that appellant was capable of performing her date-of-injury position of part-time flexible clerk, that she can return to work with no restrictions, and that no further medical treatment was required for the accepted conditions. He opined that she had reached maximum medical improvement as of January 8, 1988.

In correspondence dated May 9, 2013, OWCP requested that Dr. Mohler provide a supplemental report based on a surveillance DVD which had been obtained by the employing establishment.

In a May 15, 2013 supplemental report, Dr. Mohler reviewed the DVD and noted that if the person depicted in the DVD "is accurately identified as" appellant, that it was his opinion that she was capable of performing her date-of-injury job with no restrictions and required no further medical treatment. He also reiterated that she had reached maximum medical improvement for her accepted July 13, 1987 employment injury as of January 1988.

On June 5, 2013 OWCP provided appellant with a copy of Dr. Mohler's April 4, 2013 report.

On June 19, 2013 OWCP issued a notice proposing to terminate appellant's compensation benefits.

⁶ Dr. Mohler noted that he did not have access to a digital versatile disc (DVD) of her activities from the June 4, 2012 Office of Inspector General (OIG) investigation.

In a July 17, 2013 letter, counsel disagreed with the proposal to terminate appellant's compensation and provided arguments as to why Dr. Mohler's opinion was insufficient to support termination of her compensation.⁷ Counsel also argued that Dr. Mohler had not provided appellant's proper positive description.

On July 25, 2013 OWCP requested a supplemental report from Dr. Mohler based on his review of the accurate job description of window/distribution clerk.

In an August 6, 2013 supplemental report, Dr. Mohler noted that he had reviewed the position description provided by OWCP and that his opinion was unchanged. He reiterated his opinion that appellant no longer had any residuals or disability due to her accepted employment injury and that she was capable of performing her date-of-injury job with no restrictions.

In an August 12, 2013 letter, the employing establishment informed OWCP that appellant's job at the time of the July 13, 1987 employment injury was a part-time flexible clerk, but that the actual job she was performing on July 13, 1987 was that of a distribution clerk-machine MPLSM. It advised that the distribution clerk position was eliminated as equipment now manages those tasks.

By decision dated August 7, 2013, OWCP finalized the termination of her wage-loss and medical benefits effective that day. It found the weight of the medical evidence rested with Dr. Mohler, an OWCP referral physician, who concluded that appellant no longer had any residuals or disability due to her accepted conditions.

In an August 21, 2013 report, Dr. Judith M. VanWoert, a treating Board-certified internist, noted that she has treated appellant since 2000 and that her disability goes back to her 1987 employment injury. She related that during appellant's office visits appellant was seen standing and never sitting when waiting to be seen and that she spends up to 15 hours a day in the backyard heated pool. In concluding, Dr. VanWoert related that since 1987 appellant has had low back discomfort and opined that she is unable to return to work.

On August 30, 2013 appellant requested an oral hearing before an OWCP hearing representative which was held on March 19, 2014.

In follow-up requests dated October 4 and November 19, 2013, counsel requested OWCP provide a copy of the surveillance DVD relied upon by Dr. Mohler and that a hearing be held at appellant's home to accommodate her restrictions.⁸

⁷ The record contains a June 14, 2012 investigative report from the employing establishment's OIG indicating that special agents conducted a surveillance of appellant at her home from September 21, 2011 through April 9, 2012. OWCP had provided Dr. Mohler with a copy of the surveillance DVD when it requested a supplemental report. Counsel argued that OWCP failed to provide appellant with a copy of the DVD surveillance and other correspondence to Dr. Mohler so that she and her physicians could examine the evidence Dr. Mohler used to reach his conclusion.

⁸ Counsel also requested that a subpoena be issued to Dr. Mohler requiring his attendance at the hearing, which an OWCP hearing representative denied on February 18, 2014.

In a January 2, 2014 report, Dr. Forrest noted that appellant had been in good health prior to the July 13, 1987 employment injury. His review of a lumbar spine MRI scan revealed left L4-5 paracentral disc protrusion, L5-S1 arthritic facet joint changes, and significant L5-S1 degenerative changes. A physical examination revealed grade 2 reflexes at ankles and knees, paraspinal muscle spasm and pain on forward flexion of 30 degrees, and “difficulty standing beyond neutral.” Dr. Forrest diagnosed low back pain, lumbar radiculopathy, chronic back pain, lactose deficiency, and deviated nasal septum. In concluding, he opined that appellant’s back pain was attributable to her degenerative disc disease.

At the March 19, 2014 hearing, both appellant and Dr. VanWoert testified as to appellant’s continuing disability due to the accepted employment injury. Dr. VanWoert testified that she has treated appellant since 2000 and that she was seen on an average of two to three times a year. Next, she testified that she had reviewed reports from both Dr. Mohler and Dr. Forrest. Dr. VanWoert concurred with Dr. Mohler’s opinion that the July 13, 1987 employment injury caused appellant’s lumbar strain with chronic back pain, but disagreed with Dr. Mohler’s objective findings and clinical examination. She testified that she has never seen appellant sit for more than 10 minutes at a time and that appellant stands while waiting to be seen for a medical examination. Next, Dr. VanWoert testified to her agreement with Dr. Forrest’s opinion that appellant is unemployable and totally disabled.

By decision dated June 5, 2014, an OWCP hearing representative affirmed the August 7, 2013 decision terminating appellant’s compensation benefits.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation it has the burden of justifying modification or termination of an employee’s benefits.⁹ After it has determined that an 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.¹⁰ OWCP’s burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.¹¹

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.¹² 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.¹³

⁹ *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

¹⁰ *I.J.*, 59 ECAB 524 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

¹¹ *See J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

¹² *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

¹³ *Kathryn E. Demarsh, id*; *James F. Weikel*, 54 ECAB 660 (2003).

The purpose of a SOAF is to allow a physician to form an impression of the individual and the evidence to be evaluated. The SOAF should state the conditions claimed and those accepted by OWCP, so the physician can assess whether the diagnoses given in the medical evidence to be reviewed, as well as his or her own diagnoses, are consistent with the condition(s) for which the claim was filed or accepted.¹⁴ OWCP procedures provide that a SOAF must contain the date of injury, claimant's age, the job held on the date of injury, the mechanism of injury, and the claimed or accepted conditions. It may also include additional elements, including appellant's prior medical history, depending on the nature of the condition claimed and the issues to be resolved.¹⁵ Not all information contained in a case file bears on the issues to be resolved in connection with the SOAF. Some information is irrelevant, while other material is inappropriate, prejudicial, or better discussed elsewhere. Medical opinions should not be included in the SOAF.¹⁶

The weight of medical evidence is determined by the opportunity for and thoroughness of examination, the accuracy and 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 opinion.¹⁷ Medical opinions based on incomplete history or which are speculative or equivocal are of diminished probative value.¹⁸

ANALYSIS

The Board finds that OWCP has not met its burden of proof to terminate appellant's compensation benefits as the report of the second opinion physician, Dr. Mohler, is insufficient to meet OWCP's burden of proof.

The SOAF provided to Dr. Mohler by OWCP was inaccurate as it omitted the accepted conditions of aggravation of atypical affective disorder, lumbago, and right knee soft tissue injury. In addition, this SOAF as well as previous SOAFs, noted the date-of-injury job as a part-time flexible clerk. However, based on an August 12, 2013 letter from the employing establishment, OWCP provided Dr. Mohler with a job description for distribution clerk-machine MPLSM, which the employing establishment indicated was the job appellant was performing on the actual date of injury and that the position no longer existed as it was currently done by equipment. It is well established that medical reports must be based on a complete and accurate factual and medical background, and medical opinions based on an incomplete or inaccurate history are of little probative value.¹⁹ As Dr. Mohler based his opinion on an incomplete and inaccurate history, his opinion is entitled to little probative value. Thus, the Board finds that

¹⁴ *Gwendolyn Merriweather*, 50 ECAB 416 (1999); *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Statement of Accepted Facts*, Chapter 2.809.2 (September 2009).

¹⁵ *Darletha Coleman*, 55 ECAB 143 (2003).

¹⁶ *Supra* note 14 at Chapter 2.809.7 (September 2009).

¹⁷ *L.G.*, Docket No. 09-1692 (issued August 11, 2010); *James R. Taylor*, 56 ECAB 420 (2005).

¹⁸ *L.G., id.; M.W.*, 57 ECAB 710 (2006); *Cecilia M. Corley*, 56 ECAB 662 (2005).

¹⁹ *Douglas M. McQuaid*, 52 ECAB 382 (2001).

Dr. Mohler's report is insufficient to meet OWCP's burden of proof to terminate compensation and medical benefits effective August 7, 2013.²⁰

CONCLUSION

The Board finds that OWCP failed to meet its burden to terminate appellant's wage-loss and medical benefits effective August 7, 2013.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 5, 2014 is reversed.

Issued: November 12, 2015
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

²⁰ In view of the disposition of this case, counsel's arguments on appeal will not be addressed.