

FACTUAL HISTORY

The Office accepted that on September 18, 2001 appellant, then a 44-year-old regular rural letter carrier, sustained a lumbar sprain while pulling down mail. She did not stop work at the time of appellant's injury, but was placed in light-duty status. Appellant received appropriate medical benefits, including physical therapy from September 24 through October 2001.

In chart notes dated October 15 through November 6, 2001, Dr. Patrick McCarty, an attending physiatrist, noted the September 18, 2001 injury. He found no objective abnormalities of the lumbar spine on examination and diagnosed a lumbar strain.¹ An October 29, 2001 magnetic resonance imaging (MRI) scan of the lumbar spine showed a small hemangiomas at L4, no disc herniation or protrusion, no spinal canal compression and patent neural foramina bilaterally at all levels.

Dr. Brian Kim, an attending osteopath and Board-certified physiatrist, noted a September 18, 2001 injury during an initial consultation on November 30, 2001. On examination he observed a restricted range of motion throughout the spine with paraspinal spasms. Dr. Kim obtained lumbar x-rays showing a right convexity at T2-T4 by x-ray "suggestive of muscle spasms." In a December 7, 2001 report, Dr. Kim diagnosed thoracic and lumbar strains and dysfunction with myofascial pain syndrome. He restricted appellant to light duty. Dr. Kim explained in a December 21, 2001 report that, if a pending MRI scan proved normal, appellant's pain symptoms were due to a "minor muscular strain ... perpetuated by heightened sensitivity extending from her poor working relationship and working environment." He submitted progress notes through March 15, 2002, noting continued paraspinal spasms with pain.

Appellant stopped work on April 6, 2002. She received wage-loss compensation on the daily rolls beginning that day and on the periodic rolls beginning October 6, 2002. The record indicates that she did not return to work.²

An April 19, 2002 MRI scan showed a normal thoracic spine without evidence of fracture, subluxation or disc herniation. Dr. Kim submitted progress notes from April 12 to September 4, 2002 holding appellant off work due to her continued complaints of lumbar and thoracic pain with paraspinal spasms, accompanied by anxiety. He commented in an October 2, 2002 report that he "expected that being off work completely 6½ months or so that she would be at least 75 percent better." Dr. Kim noted that, as diagnostic studies were negative for disc herniation or "significant stenosis," he could not "fully explain for the level of pain and length of [appellant's] disability." He released her to light duty as of October 3, 2002.³ Dr. Kim

¹ Appellant also submitted chart notes from Jarrett Wise, a physician's assistant, dated September 19 to October 31, 2001. A physician's assistant is not a physician within the meaning of the Federal Employees' Compensation Act. *See* 5 U.S.C. § 8101(2). As these notes were not signed or reviewed by a physician they do not constitute medical evidence in this case. *Ricky S. Storms*, 52 ECAB 349 (2001).

² Appellant completed an affidavit of earnings and employment (Form EN1032) on November 23, 2003 indicating that she had not worked during the previous 15 months.

³ The Office authorized eight acupuncture sessions by Dr. Kim from January 29 to May 21, 2003.

submitted progress notes through May 21, 2003 relating appellant's continued pain symptoms and noting that the Office authorized work hardening program in February 2003 caused an increase in her muscle spasms and anxiety.⁴ Dr. Kim also diagnosed a myofascial pain syndrome complicated by anxiety.

In a June 26, 2003 report, Dr. Kim explained that "from a medical as well as biomechanical standpoint, [appellant's] ... body habitus of less than 100 pounds and with such short posture" made it unsafe for her to lift up to 75 pounds as required by her date-of-injury position. He prescribed permanent light-duty work. Dr. Kim noted in an August 6, 2003 report that appellant's underlying anxiety disorder caused her to experience "heightened pain from a soft tissue injury."

In a September 10, 2003 report, Dr. Kim noted appellant's continued complaints of thoracic and lumbar pain. He diagnosed lumbar and thoracic strains, myofascial pain syndrome and an anxiety disorder. Dr. Kim found no acute findings on examination. He recommended continued medication and found appellant able to perform light-duty work. Dr. Kim submitted progress notes through October 29, 2003 noting continued mid-thoracic pain and paraspinal spasm. On November 10, 2003 he permanently restricted lifting to 40 pounds due to appellant's body habitus. In a December 18, 2003 report, Dr. Kim stated that he could not explain why she continued to complain of severe thoracic and lumbar pain although she had been off work for the past 20 months. A February 4, 2004 MRI scan of the thoracic spine showed no abnormalities.

The Office referred appellant, a statement of accepted facts and the medical record to Dr. Kevin F. Hanley, a Board-certified orthopedic surgeon, for a second opinion examination. He submitted a June 8, 2004 report providing a history of injury and treatment. Dr. Hanley related appellant's symptoms of pain throughout the spine, noted a thoracolumbar scoliosis and a somewhat positive straight leg raising test without frank neurologic abnormality. He stated that the accepted lumbar sprain or strain had resolved without residuals and that appellant's symptoms were due to a psychophysiological, nonanatomic chronic pain syndrome. Dr. Hanley noted that Dr. Kim had reached a similar conclusion after appellant failed to respond to medications and conservative treatment even after being off work for many months. He found that she had attained maximum medical improvement and that a work hardening program would be of no value. Dr. Hanley provided work restrictions due to chronic pain syndrome limiting lifting up to 15 pounds, no twisting and all other activities limited to 2 hours a day. Dr. Hanley commented that appellant's nonoccupational psychiatric condition adversely impacted her ability to return to work.⁵

By notice dated July 9, 2004, the Office advised appellant that it proposed to terminate her medical and wage-loss compensation benefits on the grounds that the medical evidence supported that her work-related lumbar condition had ceased. The Office noted that Dr. Hanley

⁴ A February 2003 functional capacity evaluation and subsequent work hardening program were part of a vocational rehabilitation effort conducted from December 2002 to October 2003.

⁵ The record contains a May 24, 2004 notice of an October 2, 2003 overpayment of \$63.76 due to a pharmacy reimbursement error. As there is no final decision of record regarding the overpayment, the overpayment issue is not on appeal before the Board.

provided a detailed, well-rationalized report based on a complete medical and factual background, explaining that the accepted condition had ceased. Appellant did not respond to the July 9, 2004 notice or submit additional evidence prior to the issuance of the Office's August 13, 2004 decision.

By decision dated August 13, 2004, the Office terminated appellant's wage-loss and medical benefits effective August 8, 2004, on the grounds that the medical evidence substantiated that she no longer had a work-related medical condition or disability for work.

LEGAL PRECEDENT -- ISSUE 1

Once the Office has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.⁶ Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.⁷ The Office's burden includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁸

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained a lumbar strain on September 18, 2001. Dr. Kim, an attending osteopath Board-certified in physiatry, submitted reports finding her totally disabled for work for intermittent periods through September 10, 2003, at which time he released her to light-duty work. Based on his reports, the Office paid appellant appropriate wage-loss compensation on the daily and periodic rolls beginning on April 6, 2002.

After Dr. Kim found appellant able to perform light duty as of September 10, 2003, the Office obtained a second opinion from Dr. Hanley, a Board-certified orthopedic surgeon. He submitted a June 8, 2004 report containing a complete and accurate factual and medical history. Following a thorough physical examination, Dr. Hanley opined that appellant no longer had any disability related to the accepted lumbar sprain. He explained that her continuing symptoms were due to a nonanatomic chronic pain syndrome unrelated to the accepted injury. Dr. Hanley noted that Dr. Kim had reached a similar conclusion based on the lack of objective findings and appellant's failure to improve despite a prolonged work absence. The Board finds that Dr. Hanley's report represents the weight of the medical evidence as it is of reasonable medical certainty and supported by medical rationale.⁹ Appellant submitted no further probative medical evidence supporting a continuing injury-related disability beyond August 8, 2004. The Board

⁶ *Bernadine P. Taylor*, 54 ECAB ____ (Docket No. 02-263, issued January 15, 2003).

⁷ *Id.*

⁸ *Raymond W. Behrens*, 50 ECAB 221 (1999).

⁹ *Carol S. Masden*, 54 ECAB ____ (Docket No. 02-1667, issued January 8, 2003).

notes that a diagnosis of ‘pain’ in the absence of objective findings is not a basis for the payment of compensation.¹⁰

Consequently, the weight of the medical opinion evidence establishes that appellant had no disability for work on and after August 8, 2004 causally related to the accepted September 18, 2001 lumbar sprain.¹¹

LEGAL PRECEDENT -- ISSUE 2

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.¹² To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.¹³

ANALYSIS -- ISSUE 2

The Office terminated appellant’s medical benefits as of August 8, 2004 on the grounds that the medical evidence demonstrated that she no longer had residuals of the accepted September 18, 2001 lumbar sprain as of that date. The Board finds that both the opinions of appellant’s attending physicians and a second opinion physician establish the absence of objective, work-related residuals.

Dr. Patrick McCarty, an attending physiatrist, submitted chart notes from October 15 through November 6, 2001, finding no objective abnormalities of the lumbar spine either on physical examination or by MRI scan. Dr. Kim submitted reports beginning November 30, 2001, finding paraspinal muscle spasms, but no other objective abnormalities of the thoracic or lumbar spine.

As of December 21, 2001, Dr. Kim attributed appellant’s continuing thoracic and lumbar pain symptoms to a minor muscular strain complicated by a “heightened sensitivity to pain.” After an April 19, 2002 MRI scan of the thoracic spine revealed no abnormalities, Dr. Kim stated that he could not explain the severity and duration of appellant’s continued pain symptoms despite a prolonged absence from work. He repeated this assessment in progress notes through December 18, 2003, explaining that a nonoccupational anxiety disorder was causing her continued paraspinal muscle spasms.

Dr. Hanley submitted a June 8, 2004 report, finding no objective residuals of the accepted lumbar sprain. Dr. Hanley concurred with Dr. Kim in finding that appellant’s continued pain symptoms were the result of a nonanatomic pain syndrome. Based on his report as the weight of

¹⁰ *John L. Clark*, 32 ECAB 1618 (1981).

¹¹ *Id.*

¹² *Roger G. Payne*, 55 ECAB ____ (Docket No. 03-1719, issued May 7, 2004); *Furman G. Peake*, 41 ECAB 361 (1990).

¹³ *Pamela K. Guesford*, 53 ECAB 726 (2002).

the medical evidence, the Office terminated her authorization for medical benefits effective August 8, 2004. The Board finds that Dr. Hanley's opinion is sufficient to represent the weight of the medical evidence as it was of reasonable medical certainty and supported by medical rationale.¹⁴ The Board notes that Dr. Hanley's opinion is uncontroverted by the other medical evidence in the record. Thus, it is sufficient to meet the Office's burden of proof in terminating appellant's authorization for medical benefits effective August 8, 2004.

CONCLUSION

The Board finds that the Office properly terminated appellant's wage-loss compensation benefits effective August 8, 2004 on the grounds that any work-related disability had ceased on or before that date. The Board further finds that the Office properly terminated appellant's authorization for medical benefits as of August 8, 2004 on the grounds that the medical evidence established that she no longer had residuals of her accepted lumbar sprain as of that date.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 13, 2004 is affirmed.

Issued: March 11, 2005
Washington, DC

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁴ *Carol S. Masden, supra* note 9.