United States Department of Labor
Employees' Compensation Appeals Board

K.P., Appellant	)	
and	)	**Docket No. 07-2120**
	)	**Issued: February 4, 2008**
SMALL BUSINESS ADMINISTRATION,	)	
Niagara Falls, NY, Employer	)	

Appearances:
David W. Covino, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 15, 2007 appellant filed a timely appeal from a May 16, 2007 decision of the Office of Workers' Compensation Programs, terminating her wage-loss compensation and medical benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether the Office met its burden of proof to terminate appellant's wage-loss compensation and medical benefits.

FACTUAL HISTORY

On February 7, 2005 appellant, then a 40-year-old loan officer, sustained a lumbar back sprain and strain and left hip contusion when she tripped on a floor-mounted electrical box and fell. On February 8 and 11, 2005 Dr. Ronald J. Clarke, an attending family practitioner, diagnosed sacroiliitis and indicated that appellant was totally disabled. X-rays taken of both hips on February 24, 2005 revealed osteoarthritis. X-rays of the lumbar spine revealed mild scoliosis,

degenerative anterolisthesis at L4-5, severe facet arthropathy at L4-5 and L5-S1 and mild degenerative changes of the sacroiliac joints. The Office placed appellant on the periodic compensation rolls for temporary total disability as of September 4, 2005.

In reports dated May 17 to October 24, 2005, Dr. Clarke diagnosed a lumbar strain and left hip contusion, lumbar disc disease, sacroiliitis and a herniated disc. He advised that appellant remained totally disabled.

An August 8, 2005 magnetic resonance imaging (MRI) scan report of the lumbar spine indicated mild anterior spondylolisthesis, a disc bulge and narrowing of the neural foramina at L4-5 and a tiny central posterior disc herniation at L5-S1. December 7, 2005 x-rays of the lumbosacral spine revealed concave right scoliosis and posterior facet arthropathy resulting in mild anterior listhesis at L4-5 and mild anterior spondylolisthesis at L4-5.

In a December 12, 2005 report, Dr. David P. Nichols, a Board-certified orthopedic surgeon and Office referral physician, reviewed appellant's medical history and provided findings on medical examination. He diagnosed osteoarthritis and degenerative disc disease of the lumbar spine. Dr. Nichols stated that appellant had no residuals from her February 7, 2005 work-related lumbar sprain and strain and left hip contusion. Her persistent back symptoms were due to her chronic degenerative disc disease of the lumbar spine and aggravated by her obesity.[1]

In reports dated February 3 and October 31, 2006, Dr. Franco E. Vigna discussed his treatment of appellant for spondylolisthesis and spinal stenosis. He stated that these conditions were causally related to appellant's February 7, 2005 employment injury.

In reports dated March 3, April 24 and August 8, 2006, Dr. Clarke indicated that appellant was still totally disabled. He diagnosed a lumbar strain and hip contusion and sacroiliitis.

In a June 29, 2006 report, Dr. Kevin Skowronek, a chiropractor, diagnosed chronic discogenic pain syndrome of the thoracic and lumbar spine, aggravated by degenerative joint disease and arthritis.

The Office found a conflict in the medical opinion evidence between Dr. Clarke and Dr. Nichols as to whether appellant had residuals of her February 7, 2005 employment-related lumbar sprain and strain and left hip contusion. It referred her, together with the case file, statement of accepted facts and a list of questions, to Dr. Arlen K. Snyder, a Board-certified orthopedic surgeon, for an impartial medical examination.[2] In an August 11, 2006 report,

[1] Dr. Nichols' report is missing the second page.

[2] The referral letter is addressed to Dr. Kent A. Snyder. However, his name is Dr. Arlen Kent Snyder.

Dr. Snyder reviewed appellant's medical history and provided findings on physical examination, as follows:

> "Examination today shows a significantly overweight woman who is 5 feet 4 inches tall by my measurements, and weighs 294 pounds on our scales….
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> "During the examination, which lasted about 45 minutes, [appellant] was able to sit in the chair comfortably without any evidence of discomfort for 15 or 20 minutes during my questioning of her, and then for another 10 minutes or so after completing the examination. She was able to get on and off the table without assistance. She walked without a limp, and did not appear to be in pain. I did watch her walk from the office out to the parking lot, which is a good 500 feet or so. Although she walked slowly, there was no evidence of any limping and she got into her car without difficulty.
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> "I did not elicit any reflexes at the patellar or Achilles' level bilaterally with and without reinforcement. Straight leg raising was negative to 80 degrees bilaterally, and she had 90 degrees of flexion, 30 degrees of external rotation, and 15 degrees of internal rotation without any pain. She had full extension of both knees and flexed to about 90 degrees without pain. Further flexion was difficult because of the obesity. I did not detect any effusion of either knee, and there was no laxity with anterior drawer or Lachman's testing, and no pain on palpation. The knee was stable with varus and valgus stress bilaterally. She had good muscle strength testing involving her quads, abductors and adductors of her hips as well as dorsiflexion and plantar flexion of her toes and ankles. Pinprick sensation was likewise normal throughout both lower extremities.
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> "She had excellent range of motion of her cervical spine and moved it freely several times during the interview as well as during the exam[ination], and has excellent range of motions of her shoulders. When asked to go through a range of motion of her lower spine, she indicated that she could only flex forward about 20 degrees and hyperextend about 15 degrees. Lateral bends to the right and left were a little greater than that, but were also limited. Despite her very limited forward flexion, straight leg raising was to 80 or 90 degrees bilaterally."
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> * * *
>
> "IMPRESSION:
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> 1. I believe that [appellant] has recovered from her work-related injury of February 7, 2005, involving her left hip and lower back.
>
> 2. I believe that her continued symptoms are a result of her lumbosacral spine osteoarthritis along with her significant obesity.
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> "It is my opinion that [appellant] is able to work in a sedentary capacity as demonstrated by the fact that she sat comfortably in the chair in my office, was able to drive all the way from Niagara Falls, [New York], to Canandaigua, [New

York], which is about a two-hour drive, although she indicated that it was uncomfortable, and the fact that she is able to sit and watch [television] 8 or 10 hours a day."

In reports dated November 19, 2006 and January 19, 2007, Dr. Skowronek provided findings on physical examination and diagnosed chronic post-traumatic spondylolisthesis, with resultant spinal stenosis and foraminal narrowing and chronic cervical radiculopathy.

On April 12, 2007 the Office advised appellant of its proposed termination of her wage-loss compensation and medical benefits on the grounds that the weight of the medical evidence established that she had no residuals from her accepted lumbar sprain and strain and left hip contusion. She did not respond.

On May 16, 2007 the Office terminated appellant's wage-loss compensation and medical benefits on the grounds that the weight of the medical evidence established that she had no residuals from her work-related lumbar sprain and strain and left hip contusion sustained on February 7, 2005.[3]

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.[4] The Office may not terminate compensation without establishing that the disability ceased or that it is no longer related to the employment.[5] The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[6] Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition that require further medical treatment.[7]

Section 8123(a) of the Federal Employees' Compensation Act provides that "if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary [of Labor] shall appoint a third physician who shall make an examination."[8] Where a case is referred to an impartial medical specialist for the

[3] Subsequent to the May 16, 2007 Office decision, appellant submitted additional evidence. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

[4] *Barry Neutach*, 54 ECAB 313 (2003); *Lawrence D. Price*, 47 ECAB 120 (1995).

[5] *Id.*

[6] *See Del K. Rykert*, 40 ECAB 284 (1988).

[7] *Mary A. Lowe*, 52 ECAB 223 (2001); *Wiley Richey*, 49 ECAB 166 (1997).

[8] 5 U.S.C. § 8123(a); *see also Raymond A. Fondots*, 53 ECAB 637 (2002); *Rita Lusignan (Henry Lusignan)*, 45 ECAB 207 (1993).

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

Appellant's claim for an injury on February 7, 2005 was accepted for a lumbar sprain and strain and left hip contusion. Due to the conflict in the medical opinion evidence between Dr. Clarke and Dr. Nichols as to whether she had any continuing disability or medical condition causally related to her accepted back and hip conditions, the Office referred her to Dr. Snyder for an impartial medical examination.

Dr. Snyder was provided with appellant's case file and a statement of accepted facts. He provided a complete and accurate factual and medical history. Dr. Snyder noted that appellant was able to sit without any evidence of discomfort for 15 or 20 minutes during the interview and then for another 10 minutes after completing the physical examination. Appellant was able to get on and off the examination table without assistance. She walked without a limp, and did not appear to be in pain. At the conclusion of the examination, appellant walked from the office to the parking lot, approximately 500 feet. Although she walked slowly, there was no evidence of any limping and she got into her car without difficulty. Dr. Snyder provided detailed findings on physical examination. Examination revealed that appellant was 5 feet 4 inches tall and weighed 294 pounds. He stated:

> "Straight leg raising was negative to 80 degrees bilaterally, and she had 90 degrees of flexion, 30 degrees of external rotation, and 15 degrees of internal rotation without any pain. She had full extension of both knees and flexed to about 90 degrees without pain. Further flexion was difficult because of the obesity. I did not detect any effusion of either knee, and there was no laxity with anterior drawer or Lachman's testing, and no pain on palpation. The knee was stable…. She had good muscle strength testing involving her quads, abductors and adductors of her hips…. Pinprick sensation was likewise normal throughout both lower extremities.
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> "She had excellent range of motion of her cervical spine…. When asked to go through a range of motion of her lower spine, she indicated that she could only flex forward about 20 degrees and hyperextend about 15 degrees…. Despite her very limited forward flexion, straight leg raising was to 80 or 90 degrees bilaterally."

Dr. Snyder opined that appellant had recovered from her work-related injury of February 7, 2005 involving her left hip and lower back. He stated that her continued symptoms were the result of lumbosacral spine osteoarthritis along with her significant obesity.

The Board finds that Dr. Snyder's thorough and well-rationalized report is entitled to special weight. He provided physical findings and medical rationale in support of his opinion. Dr. Snyder is an appropriate specialist to resolve the conflict in this case, a Board-certified

[9] *See Roger Dingess*, 47 ECAB 123 (1995); *Glenn C. Chasteen*, 42 ECAB 493 (1991).

orthopedic surgeon. His report establishes that appellant has no continuing disability or medical condition causally related to her employment-related lumbar sprain and strain and left hip contusion sustained on February 7, 2005. Therefore, the Office met its burden of proof in terminating appellant's wage-loss compensation and medical benefits based on the medical opinion of Dr. Snyder.

Dr. Vigna discussed his treatment of appellant for spondylolisthesis and spinal stenosis. He indicated that these conditions were causally related to appellant's February 7, 2005 employment injury. However, Dr. Vigna provided no medical rationale explaining how the conditions were causally related to appellant's February 7, 2005 employment-related lumbar sprain and strain and left hip contusion. Therefore, his reports are not sufficient to overcome the weight of Dr. Snyder's opinion that appellant's accepted lumbar and left hip conditions had resolved.

Appellant submitted reports from Dr. Skowronek, a chiropractor. In assessing the probative value of chiropractic evidence, the initial question is whether the chiropractor is considered a physician under 5 U.S.C. § 8101(2). A chiropractor is not considered a physician under the Act unless it is established that there is a spinal subluxation as demonstrated by x-ray to exist.[10] Dr. Skowronek did not diagnose a subluxation as shown on x-ray. Therefore, he is not considered a physician under the Act and his reports are of no probative value.

On appeal, appellant asserts that the opinion of Dr. Snyder is not entitled to special weight because it is not well rationalized. She argued that he relied, in part, on an October 8, 2004 MRI scan report that is not of record. The record shows that Dr. Snyder mentioned an October 8, 2004 MRI scan in his review of the medical records. However, in the portion of his report addressing his conclusions regarding appellant's condition, he did not refer to the October 8, 2004 MRI scan. Therefore, this argument is without merit. Appellant contends that Dr. Snyder's diagnosis of nonwork-related osteoarthritis is not supported by x-rays. However, the issue to be resolved by Dr. Snyder was whether appellant's accepted conditions sustained on February 7, 2005 had resolved. Dr. Snyder provided detailed physical findings and medical rationale explaining his opinion that the accepted conditions, a lumbar sprain and strain and left hip contusion, had resolved.

CONCLUSION

The Board finds that the Office met its burden of proof in terminating appellant's wage-loss compensation and medical benefits.

[10] *See Mary A. Ceglia,* 55 ECAB 626 (2004).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 16, 2007 is affirmed.

Issued: February 4, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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