United States Department of Labor
Employees' Compensation Appeals Board

I.B., Appellant	)	
and	)	**Docket No. 09-117**
	)	**Issued: August 7, 2009**
U.S. POSTAL SERVICE, BULK MAIL CENTER, Memphis, TN, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 10, 2008 appellant filed a timely appeal of the November 27, 2007 merit decision of an Office of Workers' Compensation Programs' hearing representative and the July 11, 2008 nonmerit decision, denying her request for an oral hearing. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether the Office properly terminated appellant's wage-loss compensation and medical benefits effective July 27, 2007 on the grounds that she no longer had any residuals or disability causally related to her accepted employment-related injury; (2) whether appellant had any continuing employment-related residuals or disability after July 27, 2007; and (3) whether the Branch of Hearings and Review properly denied her request for an oral hearing pursuant to 5 U.S.C. § 8124(b)(1) because she had previously requested reconsideration pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On December 23, 2004 appellant, then a 37-year-old mailhandler, filed a traumatic injury claim alleging that on that date she injured her lower back when she slipped on the ice in the employing establishment's parking lot as she exited her vehicle. The Office accepted her claim for lumbosacral sprain/strain. It paid appellant appropriate compensation.

In a September 21, 2006 disability certificate, Dr. Steven T. Richey, an attending Board-certified physiatrist, stated that appellant could return to work four hours per day with restrictions on September 25, 2006. Appellant returned to work on the designated date.

By letter dated September 29, 2006, the Office referred appellant, together with the case record, a statement of accepted facts and a list of questions to be addressed to Dr. Carl W. Huff, a Board-certified orthopedic surgeon, for a second opinion medical examination.

In an October 24, 2006 medical report, Dr. Huff reviewed a history of appellant's conditions, including her accepted lumbar condition and medical treatment. He provided a detailed review of her medical records. On physical examination, Dr. Huff reported essentially normal findings, which included appellant's ability to forward flex to reach her ankles, full complete reversal of lordosis which indicated excellent segmentation, supple paraspinous muscles with no indication of spasm, full range of motion of the hip with no pain, intact pulses in both feet and a bilateral calf circumference of 14½ inches. He further reported positive test results on four out of five Waddell's tests which suggested strong symptom exaggeration. On neurological examination, Dr. Huff reported normal findings which included intact and symmetrical deep tendon reflexes and no muscle weakness, sensory deficits or pathological reflexes. He also reported negative lumbar x-ray, magnetic resonance imaging (MRI) scan and electromyogram (EMG) findings. Dr. Huff stated that appellant's complaints of low back and left leg pain were without objective findings. He further stated that there was no indication of any structural injury to appellant's back. Dr. Huff noted that two months after the December 24, 2004 employment injury, appellant was nontender in the back and only had tenderness over the right sacroiliac joint. He related that appellant's symptoms were now left sided. Dr. Huff observed appellant's symptom magnification which was also observed by prior physicians. He opined that appellant no longer suffered from residuals of her accepted employment-related injury since there were no physical or objective findings to establish a pathophysiology or structural abnormality. Dr. Huff further opined that appellant reached maximum medical improvement within six weeks of her employment-related injury. He concluded that appellant was capable of working eight hours per day with no limitations.

By letter dated December 14, 2006, the Office requested that Dr. Richey review Dr. Huff's October 24, 2006 report and provide an opinion regarding appellant's current medical and disability status.

In a January 18, 2007 report, Dr. Richey stated that he agreed with Dr. Huff's finding that appellant's employment-related injury should be at maximum medical improvement and that she could return to full work with no restrictions based on objective and subjective findings. He noted that appellant's pain, which ranged from 5 to 6 out of 10 on a visual analog scale with significant sleep disturbance, did not improve despite using opiate pain medication.

By letter dated June 21, 2007, the Office issued a notice of proposed termination of medical benefits based on Dr. Huff's October 24, 2006 medical opinion. It provided 30 days in which appellant could respond.

In reports dated June 12 and July 2, 2007, Dr. Michael E. Steuer, a Board-certified anesthesiologist, stated that appellant suffered from lumbar degenerative disc disease, low back pain, depression, lumbalgia, lumbar sprain/strain, left L4 and S1 radiculitis, lumbar spondylosis without myelopathy, mononeuritis of the left lower extremity, myofascial syndrome and sleep disorder. He stated that appellant remained at low risk for opioid abuse. In reports dated June 21 and July 12, 2007, Dr. Steuer stated that he administered a left L5-S1 epidural steroid injection.

By decision dated July 27, 2007, the Office terminated appellant's wage-loss compensation and medical benefits with regard to her accepted employment-related injury, effective that date.

In a report dated August 1, 2007, Dr. Steuer reiterated his prior diagnoses. On August 22, 2006 he administered a L5-S1 steroid epidural injection.

In a letter dated August 24, 2007, appellant requested reconsideration of the Office's July 27, 2007 decision. In an April 19, 2007 report, Dr. Steuer stated that he performed a L3-4, L4-5 and L5-S1 discography which revealed lumbar discogenic disease. By report dated May 9, 2007, he reiterated his prior diagnoses. An undated and unsigned report provided drug screening test results.

By decision dated November 27, 2007, the Office denied modification of the July 27, 2007 decision. It found the evidence submitted by appellant insufficient to outweigh Dr. Huff's October 24, 2006 medical opinion. In a May 29, 2008 letter, appellant requested an oral hearing before an Office hearing representative.

By decision dated July 11, 2008, the Office's Branch of Hearings and Review denied appellant's request for an oral hearing. It found that, since appellant had previously requested reconsideration on the same issue, she was not entitled to an oral hearing as a matter of right. A discretionary hearing was also denied on the grounds that appellant could appropriately address the issue of whether she continued to suffer residuals of her accepted employment-related injury by requesting reconsideration.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to her employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.[1]

[1] *Jason C. Armstrong*, 40 ECAB 907 (1989).

The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[2]

ANALYSIS -- ISSUE 1

The Board finds that the Office met its burden of proof to terminate appellant's wage-loss compensation and medical benefits based on the opinion of Dr. Huff, an Office referral physician, who reviewed a history of appellant's employment-related lumbosacral sprain/strain. Dr. Huff reported his essentially normal findings on physical, neurological and objective examination. He stated that appellant's subjective complaints of pain in the lower back and left leg were not supported by objective findings. Dr. Huff observed symptom magnification. He stated that appellant reached maximum medical improvement six weeks following the December 24, 2004 employment-related injury. Dr. Huff opined that appellant no longer suffered from residuals of her accepted employment-related injury. He explained that there were no physical or objective findings to establish a pathophysiology or structural abnormality. Dr. Huff further opined that appellant could work eight hours per day with no restrictions.

In a January 18, 2007 report, Dr. Richey, an attending physician, agreed with Dr. Huff's finding that appellant's employment-related injury had reached maximum medical improvement and that she could return to full-duty work with no restrictions based on objective and subjective findings.

The weight of the medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided the care of analysis manifested and the medical rationale expressed in support of stated conclusions.[3] Dr. Huff fully discussed the history of injury and explained that there were no objective findings to establish that appellant had any residuals or disability due to her accepted lumbar sprain/strain. For this reason, his report, which is supported by appellant's attending physician, Dr. Richey, constitutes the weight of the medical opinion evidence.

Dr. Steuer's June 12 and July 2, 2007 reports stated that appellant sustained lumbar degenerative disc disease, low back pain, depression, lumbalgia, lumbar sprain/strain, left L4 and S1 radiculitis, lumbar spondylosis without myelopathy, mononeuritis of the left lower extremity, myofascial syndrome and sleep disorder. He also stated that appellant remained at low risk for opioid abuse. Dr. Steuer's June 21 and July 12, 2007 reports stated that he administered left L5-S1 epidural steroid injections. He did not address the causal relationship between the diagnosed conditions and appellant's accepted employment injury. The Board finds that his reports are insufficient to overcome the weight accorded to Dr. Huff's medical opinion.

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

[3] *See Ann C. Leanza*, 48 ECAB 115 (1996).

LEGAL PRECEDENT -- ISSUE 2

As the Office met its burden of proof to terminate appellant's compensation benefits, the burden shifted to her to establish that she had any disability causally related to her accepted injury.[4] To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such a causal relationship.[5] Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.[6] Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[7]

ANALYSIS -- ISSUE 2

Dr. Steuer's May 9 and August 1, 2007 reports stated that appellant sustained lumbar degenerative disc disease, low back pain, depression, lumbalgia, lumbar sprain/strain, left L4 and S1 radiculitis, lumbar spondylosis without myelopathy, mononeuritis of the left lower extremity, myofascial syndrome and sleep disorder. He also opined that appellant remained at low risk for opioid abuse. Dr. Steuer's August 22, 2006 and April 19, 2007 reports stated that he performed a L3-4, L4-5 and L5-S1 steroid epidural injection and discography. He did not address whether appellant had any continuing residuals or disability causally related to her accepted employment injury, December 23, 2004. The Board finds that Dr. Steuer's reports are insufficient to establish appellant's burden of proof.

With regard to the undated and unsigned report provided drug screening test results, the Board has held that an unsigned report with no adequate indication that it was signed by a physician is not considered probative medical evidence.[8] This report lacks probative medical value because it was unsigned, did not provide a history of injury, and did not provide a medical opinion addressing whether appellant had any continuing residuals or disability causally related to her accepted employment injury.

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[4] *See Manuel Gill*, 52 ECAB 282 (2001).

[5] *Id.*

[6] *Elizabeth Stanislav*, 49 ECAB 540 (1998).

[7] *Leslie C. Moore*, 52 ECAB 132 (2000); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[8] *See R.M.*, 59 ECAB __ (Docket No. 08-734, issued September 5, 2008) (the Board has found that reports lacking proper identification, such as unsigned treatment notes, do not constitute probative medical evidence); *Richard Williams*, 55 ECAB 343 (2004) (medical reports lacking proper identification cannot be considered as probative evidence in support of a claim).

The Board finds that appellant did not submit the necessary rationalized medical evidence to substantiate that the claimed continuing residuals or disability on or after July 27, 2007 were causally related to her employment-related lumbosacral sprain/strain.

LEGAL PRECEDENT -- ISSUE 3

Section 8124(b)(1) of the Federal Employees' Compensation Act provides that before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary.[9] Section 10.615 of the federal regulations implementing this section of the Act provides that a claimant shall be afforded a choice of an oral hearing or a review of the written record.[10] The Office's regulations provide that the request must be sent within 30 days of the date of the decision, for which a hearing is sought and also that the claimant must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision.[11]

Additionally, the Board has held that the Office, in its broad discretionary authority in the administration of the Act,[12] has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that the Office must exercise this discretionary authority in deciding whether to grant a hearing.[13] The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration, are a proper interpretation of the Act and Board precedent.[14]

ANALYSIS -- ISSUE 3

Appellant's request for an oral hearing dated May 29, 2008 was denied on the grounds that she had previously requested reconsideration pursuant to 5 U.S.C. § 8128(a) of the Act.[15] The Board finds that her request for an oral hearing was made after the Office issued its November 27, 2007 decision on her request for reconsideration made pursuant to 5 U.S.C. § 8128. Therefore, the Branch of Hearings and Review correctly found that appellant was not entitled to an oral hearing before an Office hearing representative as a matter of right as she had previously requested reconsideration.

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[9] 5 U.S.C. § 8124(b)(1).

[10] 20 C.F.R. § 10.615.

[11] *Id.* at § 10.616(a).

[12] 5 U.S.C. §§ 8101-8193.

[13] *Marilyn F. Wilson*, 52 ECAB 347 (2001).

[14] *Teresa M. Valle*, 57 ECAB 542 (2006). *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4(b)(3) (June 1997).

[15] *See Peggy R. Lee*, 46 ECAB 527 (1995) (where the Board found that appellant's request for an oral hearing was made after the Office issued its decision on his request for reconsideration made pursuant to 5 U.S.C. § 8128 and therefore appellant was not entitled to an oral hearing before an Office hearing representative as a matter of right).

In its July 11, 2008 decision, the Branch of Hearings and Review acknowledged that although there was no entitlement to an oral hearing, it could allow such an oral hearing within its discretion. An abuse of discretion is generally shown through proof of manifest error or a clearly unreasonable exercise of judgment, neither of which is present in this case.[16] The Branch of Hearings and Review properly exercised its discretion by indicating that it had also denied appellant's hearing request on the basis that the case could be equally well addressed by requesting reconsideration and submitting additional evidence not previously considered which established that she continued to suffer residuals of her accepted employment-related injury.

CONCLUSION

The Board finds that the Office properly terminated appellant's wage-loss compensation and medical benefits effective July 27, 2007 on the grounds that she no longer had any residuals or disability causally related to her accepted employment-related injury. The Board further finds that appellant failed to establish that she had any continuing employment-related residuals or disability after July 27, 2007. Lastly, the Board finds that the Branch of Hearings and Review properly denied appellant's request for an oral hearing pursuant to 5 U.S.C. § 8124(b)(1) as she had previously requested reconsideration pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the July 11, 2008 and November 27, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 7, 2009
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[16] *See Lon E. Grinage*, 57 ECAB 177 (2005).