

**United States Department of Labor
Employees' Compensation Appeals Board**

S.C., Appellant)

and)

DEPARTMENT OF AGRICULTURE,)
AGRICULTURAL MARKETING SERVICE,)
Wayne, OH, Employer)

Docket No. 08-2223
Issued: May 7, 2009

Appearances:

Alan J. Shapiro, Esq., 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 12, 2008 appellant filed a timely appeal from November 19, 2007 and June 13, 2008 decisions 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 March 25, 2005 appellant, then a 48-year-old agricultural commodity grader in the poultry program, sustained a lumbosacral strain and contusion when her shoe coverings became wet and she slipped and fell on steps, landing on her back.

In November 2005 and January 2006, the Office asked Dr. Sean P. Callahan, appellant's attending family practitioner, to provide a current report regarding her work-related disability and medical condition.

In a June 7, 2006 office note, Dr. Callahan indicated that appellant was seen for chronic radicular back pain believed to be secondary to an annular tear at L4-S1 previously documented in a magnetic resonance imaging scan. Appellant had experienced a gradual increase in right leg numbness. She was concerned that a return to full duty would cause a worsening of her symptoms. Dr. Callahan diagnosed radicular pain, annular tear, L4-S1 foraminal narrowing. He did not explain how these conditions were related to appellant's accepted March 22, 2005 lumbar sprain and contusion.

The Office referred appellant to Dr. Frederick Shiple, III, a Board-certified orthopedic surgeon for a second opinion examination. In a July 6, 2006 report, Dr. Shiple described her current complaints and provided findings on physical examination. He noted that appellant had low back pain due to degenerative disc disease prior to her 2005 employment injury. Dr. Shiple advised that she had no residuals of her accepted lumbar sprain and contusion and no aggravation of any preexisting back condition. He opined that appellant could return to her regular job and no further medical treatment was needed for her accepted lumbar condition.

In an August 9, 2006 office note, Dr. Juliet Y. Hou diagnosed chronic low back pain radiating into the right leg. She indicated that the condition was possibly related to appellant's degenerative disc disease. An August 17, 2006 office note from a Dr. Kenneth B. Chapman indicated that appellant had a work-related accident in March 2005. Dr. Chapman described her chronic neck, thoracic and lumbar pain. He diagnosed lumbosacral spondylosis but did not explain how this condition was causally related to appellant's 2005 employment injury.

The Office found a conflict in the medical opinion evidence between Dr. Callahan and Dr. Shiple as to whether appellant had any continuing disability or medical condition causally related to her March 22, 2005 employment injury. It referred appellant, together with a statement of accepted facts, a list of questions and the case record, to Dr. Michael Hoeflinger, a Board-certified orthopedic surgeon, for an impartial medical examination.

In a June 18, 2007 report, Dr. Hoeflinger reviewed appellant's medical history and provided findings on physical examination and the results of diagnostic tests. He noted that appellant fell at work in February 2004 and hurt her back but did not file a compensation claim. Appellant sustained a whiplash injury following a motor vehicle accident in 2000. Dr. Hoeflinger reviewed the history of her March 22, 2005 employment injury. On physical examination, appellant ambulated with normal gait. There was no tenderness or spasm in her cervical, thoracic or lumbar spine. Range of motion was essentially normal. Dr. Hoeflinger diagnosed preexisting degenerative disc disease of the lumbosacral spine. He stated that appellant's accepted lumbar sprain and contusion had resolved and her current back symptoms were causally related to her preexisting degenerative back condition. In a July 23, 2007 supplemental report, Dr. Hoeflinger advised that appellant did not sustain an aggravation of her preexisting degenerative lumbosacral disc disease as a result of her accepted March 22, 2005 lumbar sprain and contusion. He noted that she was treated for back pain and symptoms related to lumbosacral disc herniation and degenerative disc disease as recently as December 29, 2004,

less than three months before the March 22, 2005 employment injury. On August 24, 2007 the Office provided Dr. Hoeflinger with documents received since the case file was sent to him. On September 4, 2007 Dr. Hoeflinger advised the Office that he had not changed his opinion regarding appellant's medical condition after reviewing the additional documents.

By letter dated October 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 remaining disability or medical condition causally related to her March 22, 2005 accepted lumbar sprain and contusion.

On November 7, 2007 appellant stated her disagreement with the proposed termination. She alleged that her fall at work on March 22, 2005 caused disc problems in her back and she had continuing pain causally related to the 2005 employment injury.

By decision dated November 19, 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 continuing disability or medical condition causally related to her March 22, 2005 employment-related lumbar sprain and contusion.

Appellant requested an oral hearing before an Office hearing representative that was held on April 2, 2008.

By decision dated June 13, 2008, the Office hearing representative affirmed the November 19, 2007 decision.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.¹ The Office may not terminate compensation without establishing that the disability ceased or that it is no longer related to the employment.² The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.³ 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.⁴

Section 8123(a) of the 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

¹ *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Fermin G. Olascoaga*, 13 ECAB 102, 104 (1961).

² *J.M.*, 58 ECAB ___ (Docket No. 06-661, issued April 25, 2007); *Anna M. Blaine*, 26 ECAB 351 (1975).

³ *T.P.*, 58 ECAB ___ (Docket No. 07-60, issued May 10, 2007); *Larry Warner*, 43 ECAB 1027 (1992).

⁴ *Mary A. Lowe*, 52 ECAB 223 (2001); *Wiley Richey*, 49 ECAB 166 (1997).

[of Labor] shall appoint a third physician who shall make an examination.”⁵ 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.⁶

ANALYSIS

Appellant’s claim for an injury on March 22, 2005 was accepted for a lumbar sprain and contusion. Due to the conflict in the medical opinion evidence between Dr. Callahan and Dr. Shiple as to whether appellant had any continuing disability or medical condition causally related to her March 22, 2005 employment injury, the Office referred her to Dr. Hoeflinger for an impartial medical examination.

Dr. Hoeflinger provided a comprehensive report on June 18, 2007 and supplemental reports dated July 23 and September 4, 2007. He was provided with appellant’s case file and a statement of accepted facts. Dr. Hoeflinger noted that appellant fell at work in February 2004 and hurt her back but did not file a claim. Appellant sustained a whiplash injury following a motor vehicle accident in 2000. Dr. Hoeflinger reviewed the factual and medical background of the March 22, 2005 employment injury, including diagnostic test results. On physical examination appellant ambulated with normal gait. There was no tenderness or spasm in her cervical, thoracic or lumbar spine. Range of motion was essentially normal. Dr. Hoeflinger diagnosed preexisting degenerative disc disease of the lumbosacral spine. His reports are based upon a complete and accurate factual and medical background and findings on physical examination. Dr. Hoeflinger opined that appellant’s accepted lumbar sprain and contusion had resolved long ago and her current back symptoms were causally related to her preexisting degenerative back condition. He provided a reasoned opinion as to why appellant did not sustain an aggravation of her preexisting degenerative lumbosacral disc disease as a result of her accepted March 22, 2005 lumbar sprain and contusion. Dr. Hoeflinger noted that she was treated for back pain and symptoms related to lumbosacral disc herniation and degenerative disc disease as recently as December 29, 2004, less than three months before the March 22, 2005 employment injury. The Board finds that his thorough and well-rationalized reports are entitled to special weight.⁷ Dr. Hoeflinger’s reports established that appellant had no continuing disability or medical condition causally related to her accepted lumbar sprain and contusion sustained on March 22, 2005. His reports established that her ongoing back symptoms were causally related to preexisting back conditions. Accordingly, the Office met its burden of proof in terminating appellant’s wage-loss compensation and medical benefits based on the medical opinion of Dr. Hoeflinger that her accepted conditions had resolved.

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

⁶ *See Roger Dingess*, 47 ECAB 123 (1995); *Glenn C. Chasteen*, 42 ECAB 493 (1991).

⁷ *See Sharyn D. Bannick*, 54 ECAB 537 (2003).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 13, 2008 and November 19, 2007 are affirmed.

Issued: May 7, 2009
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