

when she was struck twice in her left hip with a plastic hamper loaded with mail.¹ In a December 20, 2006 form report, Dr. Michael J. Paul, an attending Board-certified orthopedic surgeon, advised that he examined appellant on December 11, 2006 and diagnosed lumbar disc disease with lumbar radicular pain. He checked a “yes” box indicating that her condition was caused or aggravated by the reported December 7, 2006 work incident of being hit twice in the hip by a hamper.²

In a February 12, 2007 form report, Dr. Paul stated that appellant reported that on December 7, 2006 she was struck twice by a hamper at work. He diagnosed lumbar disc disease with radicular pain and post-traumatic hip pain and checked a “yes” box indicating that these conditions were caused or aggravated by the reported work incident. Dr. Paul examined appellant on June 6, August 1, December 11, 2006 and February 12, 2007 and noted that she had preexisting lumbar disc disease with radicular pain. Appellant was found to be totally disabled commencing December 7, 2006. In a March 7, 2007 form report, Dr. Paul indicated that appellant could not perform her regular work due to back, lateral hip and leg pain exacerbated by her work.³

In a March 5, 2007 report, Dr. Edward T. Soriano, an attending osteopath specializing in physical medicine and rehabilitation, noted that appellant reported bilateral hip and low back pain radiating into her legs. Neurological examination demonstrated 5/5 strength throughout the lower limbs with the exception of 4/5 strength with bilateral hip flexion and 4+/5 strength with bilateral knee extension and right ankle dorsiflexion. Palpation revealed pain with bilateral hip internal rotation. Dr. Soriano diagnosed lumbar disc disease, lumbar radicular leg pain, history of L4-5 and L5-S1 percutaneous discectomy, myofascial pain and post-traumatic lateral hip pain. In a March 24, 2007 report, Dr. Soriano stated that appellant also complained of right knee pain.

The Office referred appellant to Zahar Stark, a Board-certified orthopedic surgeon, for further evaluation of her condition. In a June 5, 2007 report, Dr. Stark stated that appellant reported that she was injured on December 7, 2006 when she was struck twice by a plastic hamper in her right hip area.⁴ Appellant complained of pain in her lower back which radiated into both legs and of weakness, tingling and numbness in both legs. Physical examination of appellant’s mid and lower back revealed tenderness over the spinous process of the lumbar vertebrae, paralumbar muscles and iliolumbar ligaments bilaterally, right more than left, without spasm. There also was tenderness over the trapezius muscles bilaterally without spasm. Appellant stated that she was unable to walk in a calcaneus or equinus gait due to pain in her back and both knees. Range of motion testing of the lumbar spine elicited pain and showed

¹ Appellant injured her right shoulder at work in August 2006 and had been working in a light-duty position for the employing establishment since that time. She underwent right shoulder surgery in February 2007. Appellant’s right shoulder condition is not the subject of the present appeal. She reported having problems with her back since the 1970s and previously had surgery at L4-5 and L5-S1.

² In a December 11 and 19, 2006 notes, Dr. Paul indicated that appellant could not return to work. He had previously examined appellant on June 6 and August 1, 2006 and found lumbar disc disease.

³ Dr. Paul also noted that appellant had an L5-S1 disc herniation and protruding cervical discs.

⁴ Appellant originally reported that she was hit in her left hip.

results that were 50 percent of normal. Appellant exhibited no sensory or motor deficit in her legs. Examination of her right knee revealed diffuse tenderness and swelling over her knee with effusion.

After examining appellant and reviewing the medical records, Dr. Stark determined that there was no indication from the medical records that she sustained any injuries as a result of the December 7, 2006 incident. He noted, "There is no documentation of any medical exam[ination]." Dr. Stark indicated that on June 6 and August 1, 2006 Dr. Paul noted that appellant had the preexisting condition of lumbar disc disease with radicular pain. He stated:

"It is my opinion at this time that there is no current disability due to the work-related incident on December 7, 2006. There are no objective findings to substantiate aggravation of prior conditions as a result of the December 7, 2006 incident, and there are no objective findings for any current disability from work as a result of such aggravation, it is my opinion at this time that in relation to the job injury on [December 7, 2006], patient is able to perform her date[-]of[-]injury job, and she has returned to her pre-incident condition. No further treatment is required to treat the injury that patient sustained in the work-related incident of December 7, 2006."

In a June 27, 2007 letter, the Office advised appellant that it proposed to terminate her compensation. It found that the opinion of Dr. Stark established that she no longer had residuals of her December 7, 2006 employment injury. The Office requested that she submit any argument or evidence within 30 days if she wished to contest the proposed termination.

Appellant submitted a July 5, 2007 report from Dr. Soriano, who stated that she reported experiencing continuing back pain with pain, numbness, tingling and weakness in both legs. Physical examination demonstrated no focal weakness, but straight leg testing was positive at 45 degrees for low back and leg pain. In a July 23, 2007 letter, appellant's attorney contended that there was a conflict in the medical opinion between Dr. Stark and Dr. Paul regarding continuing work-related residuals.

In an August 14, 2007 decision, the Office terminated appellant's compensation effective September 1, 2007, finding that the opinion of Dr. Stark established that appellant had no residuals of her December 7, 2006 employment injury after that date. It found that the medical evidence submitted by appellant did not show that she continued to have residuals of her December 7, 2006 employment injury.

Appellant requested a hearing before an Office hearing representative. At the December 20, 2007 hearing, she testified that she continued to have disabling back problems. Appellant's attorney contended that the medical reports of Dr. Paul showed that appellant continued to have residuals of her December 7, 2006 employment injury and that a conflict in medical opinion arose between Dr. Stark and Dr. Paul.

In a March 5, 2008 decision, the Office hearing representative affirmed the August 14, 2007 decision. She found that the reports of Dr. Paul were of limited probative value and that the opinion of Dr. Stark found that appellant ceased to have work-related residuals.

LEGAL PRECEDENT

Under the Federal Employees' Compensation Act,⁵ once the Office has accepted a claim it has the burden of justifying termination or modification of compensation benefits.⁶ The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁷ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁸

ANALYSIS

The Office accepted that on December 7, 2006 appellant sustained an aggravation of her preexisting lumbar neuritis/radiculitis due to an incident when she was hit twice in her left hip with a plastic hamper loaded with mail. It terminated appellant's compensation effective September 1, 2007 based on a June 5, 2007 report of Dr. Stark, a Board-certified orthopedic surgeon, who served as an Office referral physician.

The Board has reviewed the June 5, 2007 opinion of Dr. Stark and notes that it does not have reliability, probative value and convincing quality with respect to the conclusions the physician reached regarding the relevant issue in the present case. This report is of limited probative value regarding appellant's continuing work-related residuals in that Dr. Stark did not provide adequate medical rationale in support of his opinion that appellant ceased to have any residuals of her December 7, 2006 employment injury.⁹

Dr. Stark stated that there were no objective findings to substantiate that appellant had continuing residuals of her December 7, 2006 employment injury. However, he did not fully explain these aspects from appellant's findings on examination or diagnostic testing that led him to this conclusion. Dr. Stark noted that physical examination of appellant's mid and lower back revealed tenderness over the spinous process of the lumbar vertebrae, paralumbar muscles and iliolumbar ligaments bilaterally, right more than left, as well as tenderness over the trapezius muscles. Range of motion testing of the lumbar spine elicited pain and showed results that were 50 percent of normal. Dr. Stark did not explain the cause of these symptoms or adequately address why they were not related to the accepted December 7, 2006 employment injury.

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

⁷ *Id.*

⁸ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁹ *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (finding that a medical opinion not fortified by medical rationale is of little probative value).

Dr. Stark's opinion is of limited probative value for the further reason that it is not based on a complete and accurate factual and medical history.¹⁰ He stated that, after examining appellant and reviewing the medical records, he determined that there was no proof from the medical records that she sustained any injuries as a result of the December 7, 2006 incident. Dr. Stark noted, "There is no documentation of any medical exam[ination]." However, the Office accepted that appellant sustained an aggravation of her preexisting lumbar neuritis/radiculitis on December 7, 2006. Moreover, appellant was examined on December 11, 2006 by Dr. Paul, an attending Board-certified orthopedic surgeon, who found that her underlying back and leg conditions were aggravated by the December 7, 2006 employment incident.

For these reasons, the Office has not presented probative medical evidence showing that appellant ceased to have residuals of her December 7, 2006 employment injury after September 1, 2007.

CONCLUSION

The Board finds that the Office did not meet its burden of proof to terminate appellant's compensation effective September 1, 2007 on the grounds that she no longer had residuals of her December 7, 2006 employment injury after that date.

¹⁰ See *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979) (finding that a medical opinion on causal relationship must be based on a complete and accurate factual and medical history).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' March 5, 2008 decision is reversed.

Issued: November 2, 2009
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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