

FACTUAL HISTORY

The Office accepted that on August 13, 1993 appellant, then a 49-year-old material verifier, sustained a lumbar strain and chronic pain syndrome while in the performance of duty on that date. She stopped work on August 16, 1993. By decision dated April 3, 1996, the Office reduced appellant's wage-loss compensation effective April 28, 1996 on the grounds that the constructed position of order filler represented her wage-earning capacity.

By letter dated July 25, 2008, the Office referred appellant, together with a statement of accepted facts and medical record, to Dr. E. Gregory Fisher, a Board-certified orthopedic surgeon, for a second opinion medical examination to determine the nature and extent of her employment-related injuries. In an August 18, 2008 medical report, Dr. Fisher obtained a history of her employment-related injuries and medical treatment. He noted her complaint of low back pain, which she rated as 6 out of 10. Dr. Fisher listed his normal findings on physical examination. Appellant did not wear a transcutaneous electrical nerve stimulator unit, pain patches or brace over the back area. She did not walk with any external support such as a cane. Her gait was normal without a discernable limp. General alignment of the back was normal. The pelvis level and chest expansion were also normal. Appellant had no kyphosis or scoliosis deformities over the thoracic or lumbar regions. Leg lengths were equal. The back, thoracic, lumbar and sacral areas, buttocks and posterior thighs, arms, forearms, thighs and calves were not tender or painful on palpation. No muscle spasms, guarding or atrophy were noted over the lumbar or lumbosacral regions. Forward flexion of the back was 45 degrees with some discomfort and pain over the midline of the lower lumbar and lumbosacral area. Appellant could laterally bend the back to the right and left 20 degrees with pain over the midline area of the low back. Reflexes over the knees were 1 + and equal and over the ankles were trace and equal. Motor power over the lower extremities was 5/5 with no apparent muscle loss or weakness. Sensation over the lower extremities was intact to light touch. Straight leg raising of the right and left side to 80 degrees caused a minimal pulling sensation over the low back area with no pain over the back, buttocks or thighs.

Dr. Fisher opined that there were no clinical findings of any residuals of appellant's August 13, 1993 employment injuries. The intermittent low back pain she experienced over the past 15 years was due to degenerative disc disease/arthritis of the lumbar and lumbosacral area. Dr. Fisher stated that this condition was caused by appellant's normal aging process. It progressed over the years due to an increase in her age. Dr. Fisher found that the condition was not caused by, aggravated, accelerated or precipitated by the August 13, 1993 employment injuries.

By letter dated August 29, 2008, the Office requested that appellant have an attending physician review Dr. Fisher's August 15, 2008 report.

In a September 24, 2008 letter, appellant contended that she not only continued to suffer from residuals of her August 13, 1993 employment injuries, but also other physical and emotional conditions. She submitted laboratory blood test results dated January 3 and April 1, 2006 from Ohio Health Grant Riverside Laboratories. In an undated Ohio workers' compensation form, Dr. Albert C. Clairmont, a Board-certified physiatrist, requested that the diagnoses of dystonic movements and neuropathic sympathetic disorder be added to appellant's

list of allowed conditions. An undated and unsigned note from Ohio State University Spine Center requested that these same conditions be added to her claim. A December 27, 2005 x-ray report from Dr. Todd S. Klausner, a Board-certified radiologist, found that appellant was developing osteoarthritis in her right knee, early arthritic changes in her left knee, mild to moderate multilevel degenerative disc disease and associated facet sclerosis of the lumbar spine and pelvis. No acute osseous abnormality or significant osteoarthritic change was found in the right hip. The left femoral head of the left hip appeared normally contoured and well seated with no evidence of avascular necrosis or acute fracture deformity. The hip joint space appeared generally preserved with no significant osteoarthritic change identified. There appeared to be very mild subchondral eburnation involving the left S1 joint. No chondrocalcinosis was noted. An unsigned and undated report from Musculoskeletal Medical Specialists, Inc. advised that appellant experienced pain in the lower back, knee and leg.

On December 15, 2008 the Office issued a notice of proposed termination of appellant's wage-loss compensation and medical benefits based on Dr. Fisher's August 15, 2008 medical opinion. Appellant was afforded 30 days to respond to this notice. She did not respond.

By decision dated January 20, 2009, the Office terminated appellant's compensation for wage-loss and medical benefits with regard to her accepted employment-related injuries, effective that date. The submitted medical evidence was found insufficient to establish that she had any continuing residuals causally related to her August 13, 1993 employment injuries. By letter dated February 19, 2009, appellant, through counsel, requested a telephonic hearing with an Office hearing representative.

During the June 10, 2009 telephonic hearing, appellant contended that following her August 13, 1993 employment injuries, she never returned to work. She was found to be totally disabled by the Social Security Administration. Appellant's application for retirement benefits was denied by the Office of Personnel Management. She described her ongoing medical treatment.

In an August 28, 2009 decision, an Office hearing representative affirmed the January 20, 2009 termination decision. The medical evidence was found insufficient to establish that appellant had any continuing residuals causally related to her accepted employment-related injuries.

LEGAL PRECEDENT

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

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

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

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 requires further medical treatment.³

ANALYSIS

On appeal, appellant contends that the Office's decision is contrary to fact and law. The Board finds, however, that the Office met its burden of proof to terminate appellant's wage-loss and medical benefits as of January 20, 2009. It accepted that she sustained a lumbar strain and chronic pain syndrome while in the performance of duty on August 13, 1993. The Office subsequently referred appellant to Dr. Fisher for a second opinion evaluation.

Dr. Fisher's August 18, 2008 report reviewed a history of appellant's August 13, 1993 employment-related injuries and medical treatment. He found that there were no clinical findings of any residuals of the accepted employment injuries. Dr. Fisher advised that his physical examination was normal. He explained that he found no pain, tenderness or discomfort on palpation of any of the muscle groups of the upper and lower extremities and lower back area. Dr. Fisher further explained that appellant did not exhibit any muscle spasms, guarding or atrophy over the lower back area. He stated that she had normal lumbar range of motion associated with some discomfort. Dr. Fisher advised that his neurological examination over the lower extremities was normal. He explained that there was no motor or sensory weakness. Dr. Fisher attributed appellant's long-standing intermittent low back pain to degenerative disc disease/arthritis of the lumbar and lumbosacral area. He explained that this condition was caused by the normal aging process and had progressed due to an increase in her age. Dr. Fisher opined that the condition was not caused by, aggravated, accelerated or precipitated by the August 13, 1993 employment injury.

The Board finds that Dr. Fisher's report represents the weight of the medical evidence and that the Office properly relied on his report in terminating appellant's compensation benefits on January 20, 2009. Dr. Fisher's opinion is based on proper factual and medical history as he reviewed a statement of accepted facts and referenced appellant's prior treatment. He also related his comprehensive examination findings in support of his opinion that all work-related conditions had resolved.

None of the medical evidence from Ohio Health Grant Riverside Laboratories, Dr. Clairmont, Ohio State University Spine Center, Dr. Klausner and Musculoskeletal Medical Specialists, Inc. provides any opinion addressing the causal relationship between the diagnosed lumbar and lower bilateral extremity conditions and the August 13, 1993 employment-related injuries.⁴ There is no other medical evidence contemporaneous with the termination of appellant's benefits which supports that appellant has any continuing employment-related condition.

³ *Mary A. Lowe*, 52 ECAB 223 (2001); *Wiley Richey*, 49 ECAB 166 (1997).

⁴ *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

The Board finds that the weight of the medical evidence establishes that appellant no longer had any residuals causally related to her accepted employment-related lumbar strain and chronic pain syndrome. Therefore, the Office met its burden of proof to terminate her compensation benefits.

As noted above, appellant had received a loss of wage-earning capacity determination in 1996. The Board has established that once a loss of wage-earning capacity is determined, it remains in place unless modified.⁵ A modification of such a determination is not warranted unless there is a material change in the nature and extent of the employment-related condition, the employee has been retrained or otherwise vocationally rehabilitated or the original determination was in fact erroneous.⁶ In certain situations, however, if the medical evidence is sufficient to meet the Office's burden of proof to terminate benefits, the same evidence may also negate a loss of wage-earning capacity such that a separate evaluation of the existing wage-earning capacity determination is unnecessary.⁷ The Office's burden to demonstrate no further disability is effectively the same, irrespective of whether there is an existing determination in place finding loss of earning capacity. Case law may suggest that a threshold evaluation of the wage-earning capacity needs to be performed before there is a termination of benefits. The Board finds, however, that the burden is often substantially the same, the evidence is the same and the process of terminating benefits need only be done once. While a claimant may still have unrelated medical conditions or impairments, the medical evidence must establish that the employment-related disability and medical conditions no longer exist.

In this case, as the Board finds that the Office properly terminated benefits, no further analysis on the modification of the wage-earning capacity is necessary.

CONCLUSION

The Board finds that the Office properly terminated appellant's compensation benefits effective January 20, 2009.

⁵ A wage-earning capacity determination remains in effect until it is properly modified. See *Katherine T. Kreger*, 55 ECAB 633 (2004).

⁶ *George W. Coleman*, 38 ECAB 782, 788 (1987); *Ernest Donelson, Sr.*, 35 ECAB 503, 505 (1984).

⁷ *A.P.*, 60 ECAB ____ (Docket No. 08-1822, issued August 5, 2009).

ORDER

IT IS HEREBY ORDERED THAT the August 28, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 15, 2010
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