

FACTUAL HISTORY

On June 17, 2008 appellant, then a 39-year-old health technician, sustained an injury in the performance of duty when she moved a patient from a bed to a geri-chair. The Office accepted her claim for strain of back, latissimus dorsi muscle, right side.

On April 6, 2009 Dr. Noubar A. Didizian, a Board-certified orthopedic surgeon and Office referral physician, examined appellant. He related her history and complaints and described his findings on physical examination. Dr. Didizian also reviewed the medical record. Based on his examination, which was short of a year from the date of injury, he concluded that appellant had fully recovered from the accepted injury without any evidence of objective orthopedic or neurological deficit. Dr. Didizian felt that she was capable of returning to regular duty without restriction. He reported no need for further medical treatment related to the accepted injury. Dr. Didizian added the fact that appellant had scoliosis in the thoracolumbar area “would result in ongoing symptomatology in the thoracic spine inherent to the diagnosis of scoliosis.”

The Office provided a copy of Dr. Didizian’s report to the attending physician, Dr. Stephen F. Ficchi, Board-certified by the American Osteopathic Board of Family Physicians. On August 18, 2009 Dr. Ficchi related appellant’s history and complaints and described his findings on physical examination. He reviewed her treatment and diagnostic testing. Dr. Ficchi diagnosed disc protrusion and bulging at C3-4; thoracic spine strain and sprain with dysfunction; lumbar spine strain and sprain with dysfunction; bulging disc at L5-S1; and bilateral L4-5 and S1 radiculopathy. He stated that all these diagnoses were a direct consequence of the accident that occurred in June 2008:

“I must respectfully disagree with [Dr. Didizian’s] conclusion as [appellant] is clearly still suffering from chronic pain. She is a hardworking and honest woman who, despite serious injuries, has continued to work. It is my medical belief that should she return to work without restrictions her condition would rapidly deteriorate resulting in an exacerbation which would prolong her recovery and treatment time.”

* * *

“It is my medical opinion that[,] within a reasonable degree of medical certainty, that [appellant] suffered serious and permanent musculoskeletal, discogenic and neurological injuries. Prior to the accident, she was completely asymptomatic and functioning without limitations. Subsequent to the accident the injuries [appellant] sustained have prevented her from working without restrictions and made the performance of her activities of daily living painful, difficult and often times requires assistance. Her current medical condition can be easily exacerbated and may prevent normal activities when symptoms are at their worst. She will therefore need to limit the intensity and duration of her activities in order to control these exacerbations.”

In a decision dated November 10, 2009, the Office terminated appellant's compensation for the accepted latissimus dorsi strain effective that date. It found that Dr. Didizian's opinion represented the weight of the medical evidence. The Office accorded more weight to Dr. Didizian because he was a Board-certified orthopedic surgeon, while Dr. Ficchi was a pain management physician. It also noted that it accepted appellant's claim for a latissimus dorsi strain/sprain only, which Dr. Didizian found to be a reasonable diagnosis given the mechanism of injury. The Office explained that it had not accepted the medical conditions for which Dr. Ficchi cited the need for treatment, disability and work restrictions. It found that he offered insufficient medical rationale to establish the element of causal relationship with respect to these other medical conditions. The Office added that Dr. Ficchi provided no objective findings to support that appellant continued to suffer from the accepted strain/sprain.

On appeal, appellant argues that she still suffers pain in her back, which has moved up her neck and down her leg and arm. She states that she is unable to grasp items with her right hand. "I feel my condition has exacerbated."

LEGAL PRECEDENT

The United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.² Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.³ After it has determined that an employee has disability causally related to her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.⁴

ANALYSIS

The Office accepted that appellant sustained a right latissimus dorsi muscle strain on June 17, 2008 when she moved a patient from a bed to a geri-chair. On November 10, 2009 it terminated compensation for that specific medical condition. The Office therefore bears the burden of justifying the termination.

The Office accords more weight to the opinion of Dr. Didizian, its referral physician, in part because he is Board-certified in orthopedic surgery.⁵ Dr. Ficchi, the attending physician, is also Board-certified and when it comes to a simple muscle strain, it is not clear that an orthopedic surgeon has more expertise than a physician of osteopathic medicine, a practice that

² 5 U.S.C. § 8102(a).

³ *Harold S. McGough*, 36 ECAB 332 (1984).

⁴ *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating the Medical Evidence*, Chapter 2.810.6.a(3) (September 2010) (the opinion of a Board-certified specialist in the appropriate field will usually carry more weight than that of a specialist who is not Board-certified or who is certified in an unrelated field).

focuses special attention on the musculoskeletal system. Both are well qualified to address the issue.

Dr. Didizian's opinion appears sound, rational and logical. His physical examination of appellant revealed no evidence of objective orthopedic deficit.⁶ Dr. Didizian noted that it had been short of a year since the date of injury. He therefore concluded that appellant had fully recovered from the June 2008 muscle strain. Dr. Didizian added that her significant thoracolumbar scoliosis would produce ongoing symptomatology.

Dr. Ficchi's opinion, by contrast, left too many questions unanswered. He noted that appellant complained of lower back pain with paresthesias and radicular symptoms, symptoms not normally associated with a muscle strain. Appellant's complaints seemed more consistent with Dr. Ficchi's diagnosis of lumbar disc bulging and L4-5 and S1 radiculopathy, medical conditions not at issue in the termination of compensation for the accepted muscle strain. Dr. Ficchi's physical findings, much less extensive than those reported by Dr. Didizian, showed severe muscle spasms on palpation of the lumbar spine.⁷ However, he did not identify the right latissimus dorsi and did not explain why appellant still suffered from a muscle strain more than a year after the incident at work. Dr. Ficchi concluded that she was still suffering from chronic pain, but the question for determination is whether she still suffered from the right latissimus dorsi muscle strain she sustained in June 2008 and how he could determine this given his other diagnoses.

The Board finds that Dr. Ficchi's opinion is less probative on the issue of right latissimus dorsi muscle strain and is insufficient to create a conflict in medical opinion requiring referral to an impartial medical specialist under 5 U.S.C. § 8123(a). Dr. Didizian's opinion represents the weight of the medical evidence and justifies the termination of compensation benefits for the accepted muscle strain. The Board will therefore affirm the Office's November 10, 2009 decision terminating appellant's compensation.

Appellant argues on appeal that she still suffers pain in her back, which has moved up her neck and down her leg and arm. She adds that she is unable to grasp items with her right hand. As the Board indicated earlier, the issue, strictly speaking, is not whether she still suffers from chronic back pain, for which there may be several causes, but whether she continues to suffer from a right latissimus dorsi muscle strain, for which she was receiving compensation benefits. If appellant claims compensation benefits for medical conditions not yet accepted, such as the protruding and bulging discs and radiculopathy Dr. Ficchi diagnosed, the Office has correctly advised her that Dr. Ficchi must explain how the June 2008 work incident caused or aggravated those medical conditions. It is appellant who carries the burden of proof in such matters.

⁶ Back flexion to 90 degrees revealed some soreness over the right sacroiliac area and diffusely so with full tilt, rotation and extension of the torso.

⁷ An early examination of appellant on June 19, 2008 showed range of motion intact and a small amount of spasm in the lower right latissimus dorsi "mid thoracic."

CONCLUSION

The Board finds that the Office properly terminated appellant's compensation for the accepted muscle strain.

ORDER

IT IS HEREBY ORDERED THAT the November 10, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 30, 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