

FACTUAL HISTORY

On June 15, 2007 appellant, then a 38-year-old police officer, filed a traumatic injury claim for her low back when she closed a gate at work. The Office accepted her claim for a lumbar sprain. Appellant did not immediately stop work but was terminated by the employing establishment on January 17, 2008, during her probationary period, for failure to complete her course of instruction and physical inability to perform her duties. The Office paid wage-loss compensation on January 26, 2008.

From July 11 to 30, 2007, appellant sought treatment from Dr. Carlos R. Barberis, a Board-certified internist for low back pain. She reported a two-week history of injury while closing a gate at work and advised that she continued to have persistent back pain. Dr. Barberis diagnosed muscle spasms, scoliosis and acute low back pain. Appellant was also treated by Dr. Martha Strickland, a Board-certified internist, from July 31 to September 6, 2007 for low back pain radiating into her legs. On August 13, 2007 Dr. Strickland diagnosed exacerbated lumbar pain from chronic degenerative changes in the low back. A July 31, 2007 x-ray of the lumbar spine revealed degenerative changes at L5-S1, with no fracture or spondylosis and mild levoscoliosis. Appellant also sought treatment from Dr. Robert Martin, a Board-certified internist, from September 6, 2007 to January 7, 2008. Dr. Martin diagnosed sacroiliitis and recommended aggressive rehabilitation including physical therapy. In a January 7, 2008 duty status form, he diagnosed sacroiliac joint pain and returned appellant to work light duty with restrictions for 30 days.

On April 4, 2008 the Office referred appellant to Dr. Steven Lancaster, a Board-certified orthopedic surgeon, for a second opinion. In a May 8, 2008 report, Dr. Lancaster noted examining appellant on May 7, 2008 and discussed her work history. He noted findings upon physical examination of full range of motion of the knees and ankles, normal reflexes and quadriceps strength, no sensory deficit, no spasm in the lumbar spine and pain in the mid portion of the back. Dr. Lancaster diagnosed lumbar strain, rule out herniated disc. He advised that there were no objective clinical findings on physical examination to support appellant's subjective complaint of pain. Dr. Lancaster noted x-rays revealed spondylosis and degenerative conditions. He recommended appellant undergo a magnetic resonance imaging (MRI) scan of the lumbar spine and a functional capacity evaluation.

On May 8, 2008 the Office referred appellant for a functional capacity evaluation scheduled for May 28, 2008. On May 27, 2008 appellant contacted the Office by telephone and requested the evaluation be rescheduled.² In a June 4, 2008 letter, the Office notified her that the functional capacity evaluation was rescheduled for June 11, 2008. On June 11, 2008 it was advised that appellant did not attend the examination.

² In a May 2, 2008 letter received by the Office on May 8, 2008, appellant informed the Office of her new mailing address. The May 8, 2008 Office referral letter was sent to her old address.

In a supplemental report dated July 10, 2008, Dr. Lancaster advised that an MRI scan of the lumbar spine performed on July 1, 2008 revealed degenerative disc changes at L4-5 and L5-S1; a small central disc herniation at L4-5 without nerve root impingement; and a small broad-based posterior disc herniation at the L5-S1 appearing to cause some very slight impingement on the intraspinal portions at the S1 nerve roots bilaterally. He noted that these findings were similar to the previous study of August 31, 2007 obtained after appellant's June 15, 2007 injury and which indicated that at that time there were degenerative endplate changes at L4-5 and L5-S1 signifying a degenerative condition. Dr. Lancaster reiterated that he found no objective findings on examination to support any injuries and appellant's subjective complaints outweighed her objective findings. He advised that a lumbar strain would have not caused appellant's underlying disc herniation at L4-5 or L5-S1 since these were preexisting degenerative areas. Dr. Lancaster opined that she experienced a temporary aggravation of a preexisting degenerative condition which would have subsided and her current condition was the result of a preexisting degenerative condition of her lumbar spine and its natural progression. He opined that appellant reached maximum medical improvement and could return to work in her regular-duty position with lifting up to 50 pounds but advised that she would be restricted from dragging 150 pounds as noted in her job description.

On July 18, 2008 the Office proposed to terminate appellant's compensation benefits as the weight of the medical evidence as provided by Dr. Lancaster established that she had no continuing residuals of her accepted work injury.

On August 15, 2008 counsel disagreed with the proposed termination and asserted that Dr. Lancaster's report was unrationalized, he ignored findings on the MRI scan reports and improperly concluded appellant had a preexisting back condition. Appellant indicated that she was never provided notice of a second functional capacity evaluation. She alleged that the statement of accepted facts was misleading and that it noted she missed two functional capacity evaluations and was terminated from employment due to lack of cooperation.

By decision dated August 19, 2008, the Office terminated appellant's compensation benefits, effective August 30, 2008, on the grounds that the weight of the medical evidence established that she had no continuing disability resulting from her accepted employment condition.

On August 26, 2008 appellant requested a telephonic hearing which was held on December 15, 2008. She submitted a memorandum in support of her claim and reiterated that Dr. Lancaster's report was deficient, that she was never provided notice of a second functional capacity evaluation and that the statement of accepted facts was misleading. Appellant submitted treatments notes and laboratory results dated March 9 to July 25, 2007 from a physician's assistant, which showed no abnormalities in the urinalysis, blood work or musculoskeletal system. She also submitted a June 5, 2008 Office referral for a functional capacity evaluation; a June 12, 2008 letter from QTC medical services, the company that schedule medical appointments and tests for the Office, noting appellant failed to attend the functional capacity evaluation; a June 26, 2008 Office referral for an MRI scan on July 1, 2008; a July 2, 2008 letter from the Office regarding a rescheduled functional capacity evaluation; and a January 17, 2008 employing establishment termination letter, all previously of record.

Appellant submitted reports from Dr. Barberis dated July 17 to 20, 2007; physical therapy notes from July 18 to 30, 2007 and a January 7, 2008 report from Dr. Martin, all previously of record.

In a decision dated March 24, 2009, an Office hearing representative affirmed the August 19, 2008 Office decision.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.³ After it has determined that an employee has disability causally related to his or 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 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, which requires further medical treatment.⁵

ANALYSIS

The Office accepted appellant's claim for lumbar strain. Dr. Martin, a treating physician, released appellant to work with restrictions on January 7, 2008. Thereafter, the Office referred her for a second opinion evaluation by Dr. Lancaster.

In a May 8, 2008 report, Dr. Lancaster provided an extensive review of appellant's medical history, reported findings on examination and diagnosed lumbar strain, rule out herniated disc. He noted findings of normal reflexes, normal quadriceps strength, no sensory deficit and no spasm in the lumbar spine with pain in the mid portion of the back. Dr. Lancaster noted x-rays revealed significant degenerative changes and advised that there were no objective physical findings to support appellant's subjective pain complaints. In a supplemental report dated July 10, 2008, he advised that an MRI scan of the lumbar spine performed on July 1, 2008 was consistent with degenerative disc changes at L4-5 and L5-S1; a small central disc herniation at L4-5; and a small broad-based posterior disc herniation at L5-S1. Dr. Lancaster correlated the July 1, 2008 MRI scan evaluation with an MRI scan study of August 31, 2007 which was done after appellant's June 2007 injury and advised that degenerative changes were present at L4-5 and L5-S1 on August 31, 2007 indicating that she had a degenerative condition at the time of her injury. He advised that the MRI scan evaluations showed objective evidence of a preexisting degenerative condition and opined that appellant's work-related lumbar strain would have not caused the underlying disc herniation at L4-5 or L5-S1 since these were degenerative areas previously noted on the July 31, 2007 study. Dr. Lancaster opined that on June 15, 2007 appellant had a temporary aggravation of a preexisting degenerative condition that would have since subsided. He opined that her current symptoms were the result of the preexisting lumbar

³ *Gewin C. Hawkins*, 52 ECAB 242 (2001).

⁴ *Mary A. Lowe*, 52 ECAB 223 (2001).

⁵ *Id.*; *Leonard M. Burger*, 51 ECAB 369 (2000).

spine degenerative condition and its natural progression. Dr. Lancaster did not indicate that appellant had any ongoing symptoms or conditions attributable to her work injury.

The Board finds that the opinion of Dr. Lancaster represents the weight of the evidence and establishes that appellant's work-related condition resolved. Dr. Lancaster indicated that appellant did not have residuals from the condition of lumbar sprain and that her current condition was due to her preexisting degenerative conditions. There is no contemporaneous medical evidence of equal weight supporting appellant's claim for continuing disability and medical residuals.

For these reasons, the Office met its burden of proof in terminating appellant's benefits for the accepted lumbar sprain.

On appeal, appellant asserts that Dr. Lancaster did not review the MRI scan reports performed on his behalf and incorrectly determined that she had a preexisting lumbar condition. The Board finds this argument to be without merit. Dr. Lancaster specifically noted the findings of the August 31, 2007 and July 1, 2008 MRI scan evaluations of the lumbar spine. Upon review of both scans, he noted that the August 31, 2007 MRI scan, performed after the June 15, 2007 work injury, revealed degenerative disc changes at the time of injury which suggested a progressive degenerative condition unrelated to the work injury. Appellant further alleged that the functional capacity evaluation was never performed and therefore Dr. Lancaster's opinion was incomplete. The Board notes that she failed to appear for the June 11, 2008 functional capacity evaluation and Dr. Lancaster proceeded with his evaluation based on the obtained diagnostic MRI scan. Dr. Lancaster concluded that appellant had no residuals of her work-related injury. He clearly opined that her current symptoms were due to her preexisting degenerative condition that was not employment related. Therefore any restrictions from a functional capacity evaluation would be based on appellant's degenerative disc disease and not her work injury. Appellant further asserts that the Office provided Dr. Lancaster with a false statement of accepted facts which indicated that she was terminated due to lack of cooperation with the employing establishment. The Board notes that the statement of accepted facts noted that she was terminated from employment due to noncompliance with an agency requirement to attend the police academy and did not state that she was uncooperative.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate benefits effective August 30, 2008.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated March 24, 2009 and August 19, 2008 are affirmed.

Issued: April 25, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

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

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