

2010 and did not return. OWCP accepted appellant's claim for lumbar sprain by decision dated August 17, 2010.

Appellant was initially treated on July 2, 2010 at the Nassau University Medical Center. She was seen by a physician's assistant, J. Kielty, who diagnosed low back pain and noted that appellant could return to work on July 6, 2010 with lifting restrictions. A duty status report dated July 2, 2010, with an illegible signature, noted a diagnosis of thoracic and lumbosacral strain and indicated that appellant could return to work on July 7, 2010, with restrictions. On July 7, 2010 Dr. Jason Shevets, Board-certified in orthopedic surgery, completed a duty status report noting that appellant could not return to work due to low back pain and radiculopathy.

On August 20, 2010 appellant was examined by Dr. Carl Paulino, an orthopedic surgeon, who noted history of her July 2, 2010 lifting injury, provided findings on physical examination, including a straight-leg test reproduction of pain at the L5-S1 nerve distribution, and diagnosed low back strain. Dr. Paulino recommended that she continue physical therapy and remain out of work. On August 27, 2010 he noted that appellant was slowly improving, but again indicated that she should remain out of work. In an October 27, 2010 report, Dr. Paulino referenced a magnetic resonance imaging (MRI) scan dated October 7, 2010. He diagnosed low back sprain with disc bulge and recommended physical therapy, as well as steroid injections if pain persisted. Dr. Paulino concluded that appellant continued to be totally disabled and could not return to work.

Appellant submitted duty status reports from Dr. Paulino dated October 15 and 27, 2010 diagnosed low back strain and concluded that she remained totally disabled. She also submitted various physical therapy bills and nurses' notes.

On November 3, 2010 OWCP referred appellant to Dr. Robert Orlandi, a Board-certified orthopedic surgeon, for a second opinion examination. Dr. Orlandi was provided with a statement of accepted facts, a copy of appellant's date-of-injury job description and copies of all available medical reports.

Dr. Orlandi examined appellant on November 17, 2010. He reviewed appellant's history of injury and test results. Regarding appellant's October 7, 2010 MRI scan examination, he stated that the scan was normal, showing only bulges at L2 through L5. Dr. Orlandi also noted that disc bulges frequently extended into foramina because of their broad-based configuration. He concluded that appellant's lumbar strain condition had resolved, that she did not have a musculoskeletal disability and that she could return to work without restrictions. Dr. Orlandi concluded:

"The claimant does not have muscular spasms and she has a normal lumbar lordotic curvature. She is making no claim for radicular symptoms into either lower extremity and reflexes, sensation and motor function are intact at this time and there is no calf atrophy. While today, she chooses to forward flex to just 60 degrees, the straight leg raising test was negative with her knees extended as the calf circumference were measured and as the heel reflexes were checked."

On December 1, 2010 Dr. Paulino examined appellant and diagnosed herniated nucleus pulposus (HNP) at L2-3, L3-4 and L4-5. He referred appellant to Dr. Sanjeev Agarwal, Board-certified in physical medical and rehabilitation. Dr. Paulino concluded that appellant's condition was improving, and that he was confident that appellant would return to full active duty in two or three months. He also signed a duty status report (Form CA-17), in which he indicated appellant's diagnosis as HNP L2-3, L3-4, and L4-5 and recommended that she not resume work.

In a report dated December 16, 2010, Dr. Agarwal noted appellant's history of injury, diagnosed appellant with lumbosacral spondylosis as well as degenerative disc disease, rule out lumbar radiculopathy. He recommended lumbar epidural steroid injections and reported that appellant remained temporarily totally disabled. On December 16, 2010 Dr. Agarwal also completed a form report wherein he stated appellant's diagnosis as sprains and strains of sacroiliac region; lumbosacral. He concluded that appellant could not return to work.

On January 14, 2010 OWCP forwarded appellant's case record to the district medical adviser (DMA). It asked him to address whether the history and mechanism of injury was consistent with the diagnosed conditions, whether the claim should be accepted for other claimed conditions, whether the positive findings in the lumbar MRI scan were due to trauma, structural defect or degenerative changes and whether OWCP should authorize spinal epidural injections.

OWCP issued a notice of proposed termination of compensation on January 20, 2011. The notice advised appellant that entitlement to wage-loss compensation and medical benefits would be terminated as the weight of the medical evidence no longer demonstrated injury-related residuals or disability.

In a January 25, 2011 decision, OWCP terminated compensation based upon a finding that appellant no longer had any disability that prevented her from returning to her date-of-injury position.

On January 22, 2011 the medical adviser opined that appellant's history and mechanism of injury were in fact consistent with the diagnosed conditions, that the claim should be accepted for additional conditions, that the positive findings were due to degenerative changes with radiculopathy by aggravation, and that OWCP should grant authorization for the procedure requested.

In a response dated January 26, 2011, the medical adviser stated that the history and mechanism of injury was consistent with the diagnosed conditions, that the claim should not be expanded to include other medical conditions, that the MRI scan findings of October 7, 2010 were due to degenerative changes, with radiculopathy by aggravation, and that authorization should be granted for spinal injection of fluoroguide. He concluded that "[appellant] is clearly suffering from symptomatic radiculopathy which has been thus far recalcitrant to conservative care, management, and treatment. At this point in time I would agree with and authorize the procedure as indicated."

In a February 2, 2011 letter, Dr. Paulino again recommended epidural steroid injections, which he believed would alleviate appellant's pain. In addition, he stated that her "lifting injury likely resulted in bulging of her lumbar discs."

Appellant filed a request for reconsideration on February 8, 2011.

In a decision dated February 22, 2011, OWCP denied appellant's request for reconsideration, without further merit review. On March 8, 2011 it again denied reconsideration of her claim.²

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits. Having determined that an employee has a disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.³

Section 8123(a) of FECA provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.⁴

ANALYSIS -- ISSUE 1

OWCP terminated appellant's wage-loss compensation and medical benefits on January 25, 2011 based upon a finding that her lower back strain condition had resolved. It relied on Dr. Orlandi's November 17, 2010 second opinion medical report. Dr. Orlandi stated that upon examination appellant did not have muscle spasms with a normal lumbar lordotic curvature. Appellant's treating physician, Dr. Paulino, however, found that appellant had low back sprain based upon her examination findings of limited forward flexion and extension of her lumbar spine. He advised that appellant was totally disabled. The Board notes that Dr. Paulino referred appellant to Dr. Agarwal, who supported the diagnosis of a lumbosacral sprain/strain and that she was totally disabled from work. The Board finds that a conflict exists in medical opinion as to appellant's residuals and disability for work due to her accepted low back strain.⁵

² It appears that OWCP issued this decision based again on appellant's February 8, 2011 request for reconsideration.

³ *E.J.*, 59 ECAB 695 (2008); *Jason C. Armstrong*, 40 ECAB 907 (1989).

⁴ 5 U.S.C. § 8123(a); *see* 20 C.F.R. § 10.321; *see I.J.*, 59 ECAB 408 (2008); *Shirley L. Steib*, 46 ECAB 309 (1994).

⁵ In this case, OWCP undertook additional development of appellant's claim by referring the evidence to OWCP's medical adviser on January 14, 2010 to address whether appellant's claim should be accepted for other claimed conditions and whether the findings from appellant's MRI scan were related to trauma or degenerative changes. OWCP however did not wait for the medical adviser's response; rather it terminated appellant's compensation benefits as of January 25, 2011.

CONCLUSION

The Board therefore finds that OWCP did not meet its burden of proof to terminate appellant's wage-loss benefits as of January 25, 2011.⁶

ORDER

IT IS HEREBY ORDERED THAT the January 25, 2011 decision of the Office of Workers' Compensation Programs is reversed.

Issued: December 22, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

⁶ Given the disposition of the first issue the second issue is moot.