

FACTUAL HISTORY

OWCP accepted that on June 1, 2008 appellant, then a 60-year-old motor vehicle operator, sustained a back sprain in the performance of duty.² It also accepted that she sustained sprains of the shoulder and left arm at the acromioclavicular joint on April 25, 2008 and multiple contusions, an ankle sprain, contusions of the right shoulder and upper arm and a lumbar sprain on June 29, 2007 under separate file numbers. OWCP doubled her case record into a master file number. Appellant stopped work on June 1, 2008 and received compensation for total disability.

In a progress report dated June 3, 2009, Dr. Leonard Soloniuk, an attending Board-certified anesthesiologist, described appellant's complaints of pain and spasm in her neck and back. He diagnosed "[c]hronic multifactorial cervical and lumbar pain as previously documented, with a severe myofascial flare through the distal thoracic/lumbar paramusculature." Dr. Soloniuk deferred an opinion on the extent of appellant's disability pending physical therapy.

On August 5, 2009 OWCP referred appellant to Dr. Aubrey A. Swartz, a Board-certified orthopedic surgeon, for a second opinion examination. In a report dated September 4, 2009, Dr. Swartz reviewed the history of injury and the medical reports of record. On examination he found full range of motion in the shoulders, good upper extremity strength, tenderness of the lumbosacral spine without spasm, equal sensation of the upper and lower extremities and three centimeters of right upper arm atrophy compared with the left side. Dr. Swartz found decreased internal rotation of the hips bilaterally and tightness in the hamstrings with straight-leg raise. He stated:

"[Appellant] has pain in the low back and buttocks and pain radiating down the groin and the lateral region of both lower extremities.

"There was an unremarkable examination of the cervical and lumbar spine, and there were no neurologic findings. Basically the spinal examination was unremarkable. [Appellant] had no complaints referable to her shoulders, and I found that her shoulders were symmetrical and had a normal range and there was no tenderness.

"With respect to my current diagnosis, I would find that [appellant] has chronic major depression with an associated somatoform disorder, with chronic multiple complaints of pain in the cervical spine and the shoulder girdles."

Dr. Swartz opined that appellant's subjective complaints outweighed the objective findings and noted that a December 10, 2007 magnetic resonance imaging (MRI) scan study was essentially normal with only L4-5 mild disc bulging. He concluded that the examination was "basically unremarkable." Dr. Swartz found that appellant's complaints of back pain were not

² Appellant initially filed a recurrence of disability claim on June 1, 2008 due to a June 29, 2007 employment injury. OWCP found that it was a claim for a new injury as she attributed her condition to experiencing pain in her back while cleaning shelves. In a decision dated September 8, 2008, it denied appellant's claim for disability compensation from June 5 to July 16, 2008 after finding that she was entitled to continuation of pay for this period.

employment related. Regarding whether the diagnosed condition was connected to factors of employment described in the statement of accepted facts, Dr. Swartz related:

“It appears there was initially a direct cause to her complaints. However, at this time there are multiple complaints without any objective findings or imaging studies to support these complaints and this injury has resolved. At this time we are dealing with psychological issues, which appear to be driving these complaints. There are also comorbidities that would also probably be of concern to her that would be clouding this issue.”

Dr. Swartz advised that appellant required no further medical treatment as she had no residuals of her musculoskeletal injuries to her back and upper and lower extremities. He attributed her complaints to chronic major depression and opined that her disability due to her August 1, 2008 injury ceased by November 1, 2008, her disability due to the April 25, 2008 injury ceased by July 25, 2008 and her injury due to her June 29, 2007 injury ceased by September 29, 2007. Dr. Swartz found that appellant had no work restrictions due to any employment-related condition but had restrictions due to her age.

On October 22, 2009 OWCP requested that Dr. Soloniuk review the opinion of Dr. Swartz and address whether he agreed with his findings and explain whether appellant had any objective findings supporting continued residuals of her work injury or employment-related disability.

On October 28, 2009 Dr. Soloniuk listed findings on examination of generalized tenderness through the lumbar paraspinal structures, limited range of motion of the cervical spine and a positive Tinel’s sign of the right wrist. He indicated that an October 27, 2009 electromyogram and nerve conduction study showed an acute neuropathic process of the bilateral lumbosacral paraspinal muscles with lower extremity weakness possibly due to cervical stenosis. Dr. Soloniuk diagnosed unchanged chronic lumbar pathology. He reviewed the findings of Dr. Swartz and related that the report contained “some manifestly inaccurate statements.” In response to the questions posed by OWCP, Dr. Soloniuk stated, “The first question pertains to the length of expected total temporary disability which has already been addressed by their physician, Dr. Swartz to which we agree.” He further agreed with the work restriction evaluation completed by Dr. Swartz but found that appellant should squat, kneel or climb only one hour per day and reach overhead no more than four hours per day. Regarding whether there were objective findings of work restrictions, Dr. Soloniuk referred to his current examination findings. In an accompanying work restriction evaluation of the same date, he indicated that appellant could not perform her regular employment due to “age[-]related reasons.” Dr. Soloniuk found that she could work eight hours per day with permanent restrictions.

By letter dated December 9, 2009, OWCP advised appellant of its proposed termination of her compensation and authorization for medical benefits on the grounds that she had no further disability or need for medical treatment due to her accepted work injuries.

In a progress report dated December 1, 2009, Dr. Soloniuk listed findings on examination and diagnosed neuropathic pain of the wrists and hands of uncertain etiology, possibly due to

cervical stenosis. An MRI scan study of the cervical spine dated December 28, 2009 revealed multilevel degenerative disc disease without cord compression or lesions.

By letter received January 11, 2010, appellant disagreed with the proposed termination of her compensation. She described her pain and the limitations on daily activities. Appellant related that Dr. Swartz evaluated her in under 20 minutes and did not perform sufficient neurological tests. She noted that he attributed her complaints to somatoform disorder and depression because she took medication for pain and due to her history of breast cancer. Appellant noted that an October 27, 2009 EMG study found an acute neuropathic process of the paraspinous muscles. She related that under state law she qualified for vocational rehabilitation.

By decision dated February 4, 2010, OWCP terminated appellant's compensation effective February 14, 2010 after finding that the weight of the medical evidence established that she had no further employment-related disability or condition requiring medical treatment.

On February 10, 2010 appellant, through her attorney, requested a telephone hearing. On February 25, 2010 she submitted the results of EMG and NCS studies, performed on February 2, 2010, which revealed mild-to-moderate carpal tunnel syndrome on the left side, no evidence of bilateral upper radiculopathy and a possible mild peripheral neuropathy.

At the hearing, held on May 7, 2010, appellant related that she was not offered vocational rehabilitation of a limited-duty position at the employing establishment. She related that she no longer required treatment for her ankle or right shoulder but continued to require treatment for her low back.

In a decision dated July 28, 2010, a hearing representative affirmed the February 4, 2010 decision. He found that the opinion of Dr. Swartz represented the weight of medical evidence and established that appellant had no further work-related disability or condition.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.³ OWCP's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained multiple contusions, a right ankle sprain, a right upper extremity contusion and lumbar sprain due to a June 29, 2007 injury, a left shoulder and upper arm sprain due to an April 25, 2008 work injury and lumbar sprain due to a June 1, 2008 injury. Appellant stopped work on June 1, 2008 and did not return.

³ *Elaine Sneed*, 56 ECAB 373 (2005); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

⁴ *Gewin C. Hawkins*, 52 ECAB 242 (2001).

The Board finds that OWCP met its burden of proof to terminate appellant's compensation benefits. In a progress report dated June 3, 2009, Dr. Soloniuk diagnosed chronic, multifactorial cervical and lumbar pain. He indicated that he would address the extent of any disability after physical therapy.

OWCP referred appellant to Dr. Swartz for a second opinion examination. On September 4, 2009 Dr. Swartz reviewed the history of injury, the medical evidence of record, and listed findings on examination of full range of motion in the shoulders, full strength and sensation of the upper extremities, tenderness of the lumbosacral spine without spasm and full sensation of the lower extremities. He measured three centimeters of right upper arm atrophy and found reduced internal rotation of the hips bilaterally with hamstring tightness with straight-leg raise. Dr. Swartz advised that his evaluation of appellant's cervical and lumbar spine was unremarkable with no neurological findings. He noted that she had no shoulder complaints and asserted that her complaints of back pain were not employment related. Dr. Swartz diagnosed major depression and somatoform disorder with complaints of cervical and shoulder pain. The Board finds that his opinion has reliability, probative value and convincing quality with respect to the conclusion reached regarding whether appellant had any further employment-related disability. Dr. Swartz provided a thorough review of the factual and medical history. Moreover, he provided a proper analysis of the factual and medical evidence and findings on examination and reached conclusions regarding her condition.⁵ Dr. Swartz explained that appellant had no further injury-related condition based on normal imaging studies and the lack of objective examination findings but instead had psychological issues causing her complaints. He found that she had no need of further medical treatment as she had no residuals due to her musculoskeletal injuries to her back and upper and lower extremities. Dr. Swartz determined that appellant had no restrictions due to any employment-related condition but had age-related limitations. He further indicated that she had no further disability due to any employment injury after November 1, 2008.

The remaining evidence submitted prior to OWCP's termination of compensation is insufficient to establish that appellant had any further disability due to her accepted work injuries. OWCP requested that Dr. Soloniuk review Dr. Swartz' opinion and address whether appellant had any further disability or residuals of her accepted conditions. On October 28, 2009 Dr. Soloniuk found lumbar paraspinal tenderness, reduced cervical range of motion, a positive Tinel's sign and an acute paraspinal process possibly due to cervical stenosis. He diagnosed unchanged chronic lumbar pathology. Dr. Soloniuk indicated that Dr. Swartz' report contained some inaccuracies but did not further explain his statement or specify which findings he believed to be in error. He concurred with Dr. Swartz' finding regarding the length of appellant's temporary total disability. Dr. Soloniuk listed work restrictions on an accompanying work restriction evaluation but provided the reason that she could not perform her usual employment as age related. Consequently, his opinion is insufficient to outweigh that of Dr. Swartz or to create a conflict as he did not specifically find appellant had any further disability due to her employment injuries. Appellant submitted diagnostic studies showing mild-to-moderate left carpal tunnel syndrome and a possible mild peripheral neuropathy and an MRI scan study showing cervical degenerative disc disease. The objective studies, however, do not address the

⁵ *Pamela K. Guesford*, 53 ECAB 726 (2002).

relevant issue of whether she remained disabled due to an accepted injury. Accordingly, OWCP met its burden of proof to terminate appellant's compensation benefits.

LEGAL PRECEDENT -- ISSUE 2

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁶ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁷

ANALYSIS -- ISSUE 2

OWCP met its burden of proof to terminate authorization for medical benefits through the opinion of Dr. Swartz, the referral physician, who found that appellant had no need for further medical treatment of her accepted conditions. Dr. Swartz explained that her subjective complaints were not supported by objective findings based on the physical examination and the diagnostic studies. While Dr. Soloniuk diagnosed lumbar pathology, he did not specifically find it related to employment or explain why appellant required any further medical treatment for an accepted condition. Consequently, Dr. Swartz' opinion represents the weight of the medical evidence and establishes that she has no further need for medical treatment.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that OWCP properly terminated appellant's compensation and authorization for medical treatment effective February 14, 2010 on the grounds that she had no further disability or residuals causally related to her accepted employment injury

⁶ *T.P.*, 58 ECAB 524 (2007); *Pamela K. Guesford, id.*

⁷ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the July 28, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 25, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

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