

**United States Department of Labor
Employees' Compensation Appeals Board**

L.D., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Tampa, FL, Employer**

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**Docket No. 10-1235
Issued: March 1, 2011**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 31, 2010 appellant timely appealed a March 18, 2010 merit decision of the Office of Workers' Compensation Programs terminating her compensation benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

ISSUE

The issue is whether the Office met its burden of proof to terminate appellant's wage-loss and medical compensation benefits effective March 19, 2010 on the grounds that she had no residuals or disability causally related to her accepted employment-related injuries.

FACTUAL HISTORY

This case was previously before the Board. In a December 9, 2002 decision, the Board reversed a February 21, 2002 Office decision terminating appellant's compensation benefits effective July 15, 2001.¹ The Board found that the report of Dr. Walter I. Choung, a Board-certified orthopedic surgeon selected as the impartial medical specialist, was insufficient to meet

¹ Docket No. 02-1030 (issued December 9, 2002).

the Office's burden of proof. The law and the facts of the case as set forth in the Board's decision and order are incorporated by reference.²

In a July 16, 2008 report, Dr. Robert A. Sparks, a Board-certified orthopedic surgeon and Office referral physician, opined that appellant's lumbar and cervical sprain/strain resolved years earlier. Appellant's current back problem was due to degenerative disease permanently aggravated by the December 24, 1991 work injury. Dr. Sparks explained that appellant's disabling pain continued and that the aggravation continued and was considered permanent. He stated that maximum medical improvement was reached five to eight years earlier. In his reports and an accompanying July 16, 2008 work capacity evaluation, Dr. Sparks reiterated that appellant was permanently disabled from working.

In an August 13, 2008 report, Dr. David H. Sikes, an attending Board-certified internist, noted findings on examination and assessed post-traumatic back pain, ongoing and severe, obesity and hyperlipidemia. In an August 13, 2008 letter, he advised that appellant continued to have back pain with exacerbations due to her work injury. Dr. Sikes stated that her condition was disabling and had not resolved. Appellant had long-standing degenerative disease of the spine and a "new injury." Since she had not returned to her preinjury status, Dr. Sikes advised that it was a permanent condition for which she was totally disabled.

On August 4, 2009 the Office approved appellant's change in treating physicians to Dr. Michael D. Dick, a rheumatologist. In a July 27, 2009 report, Dr. Dick noted the history of the work injury and appellant's preexisting arthritis. Appellant presented with complaints of pain in her neck, low back and hands for the prior 15 years and had been diagnosed with osteoarthritis. Dr. Dick provided findings on examination and an assessment of osteoarthritis (hands, hips and knees), bilateral gluteal bursitis, bilateral trochanteric bursitis, bilateral sacroiliitis and obstructive sleep apnea. In a July 29, 2009 report, he noted appellant's complaints of bilateral low back pain and listed bilateral sacroiliitis.

On October 8, 2009 the Office referred appellant for a second opinion examination with Dr. Steven B. Fuller, an osteopath Board-certified in internal medicine. In a November 10, 2009 report, Dr. Fuller reviewed the history of injury and noted findings from an October 21, 2009 examination. He advised that lumbar spine x-rays revealed degenerative disc changes and facet hypertrophy at L4-L5 and L5-S1 with generalized osteopenia. Dr. Fuller listed an impression of lumbar degenerative disc disease, lumbar facet arthritis, chronic lumbar strain, chronic cervical strain and obesity. In a November 9, 2009 response to the Office's questions, he reviewed the statement of accepted facts and the medical record. Dr. Fuller stated that appellant had L4-L5 and L5-S1 degenerative disc disease with facet hypertrophy. Appellant experienced mechanical back pain symptoms associated with her degenerative condition which represented a chronic lumbar strain that was not directly related to her reported injury. The medical record contained reference to degenerative lumbar pain prior to her accepted injury. Dr. Fuller stated that the aggravation associated with the work injury had resolved and her overall condition continued to deteriorate due to the degenerative process and her overall deconditioning. The cervical strain associated with the work injury had also resolved. Dr. Fuller noted that there was generalized

² The Office accepted appellant's 1991 claim, where she tripped over catalogs, for a cervical and lumbar strain.

muscle tenderness and diminished range of motion indicative of muscle strain, which he attributed to appellant's degenerative process and overall deconditioning. Appellant reached maximum medical improvement and her accepted cervical and lumbar spine strains resolved no later than one year after the injury occurred. Dr. Fuller explained that muscle and ligamentous strains associated with an injury generally resolved within six months of injury and persistent muscle or ligamentous strains could be attributed to more chronic conditions or overall deconditioning. He found appellant was capable of working eight hours a day in a sedentary or light duty with permanent restrictions. A completed Form OWCP-5c work capacity evaluation noted recommended work restrictions.

On December 30, 2009 the Office proposed to terminate appellant's compensation benefits based on Dr. Fuller's opinion that the accepted conditions had resolved. Appellant was afforded 30 days to submit additional evidence.

In a January 4, 2010 letter, appellant contended that the medical reports from Dr. Dick, Dr. Sikes and Dr. Sparks found a permanent aggravation of her preexisting osteoarthritis. She argued that her original diagnosis had always been an aggravation of her preexisting osteoarthritis and not a lumbar strain, the condition accepted by the Office. Appellant resubmitted the reports of Dr. Sikes and Dr. Sparks and a work capacity evaluation.

In an October 20, 2009 report, Dr. Dick noted treating appellant since July 27, 2009 and stated that she had post-traumatic low back pain as well as stiffness in her neck and hands. He noted a history of the December 24, 1991 work injury and that she had been disabled since that time. Dr. Dick reported appellant's treatment following the work injury and set forth the results of his examination. Appellant's medical problems included erosive osteoarthritis of the hands with osteoarthritis hips and knees, bilateral trochanteric bursitis, bilateral gluteal bursitis, bilateral sacroiliitis, marked degenerative disc disease of the cervical spine at C6-C7 and C5-C6 level and marked degenerative disc disease of the lumbar spine at the L5-S1 level. Dr. Dick opined that she was unable to spend more than two hours a day sitting, standing or walking and could not work more than two to three hours a day. He stated that appellant's job could not be modified to suit her disabilities and that her back pain did not improve over time and frequently worsened. Dr. Dick found that she continued to be totally and permanently disabled.

On February 18, 2010 the Office requested that Dr. Fuller clarify his opinion as to whether there were objective findings to support a diagnosis of aggravation of preexisting degenerative disc disease. In a February 24, 2010 response, Dr. Fuller explained that appellant had preexisting degenerative disc disease that predated her work injury. Appellant's present condition was related to her chronologic age, obesity and generalized deconditioning. Dr. Fuller stated that she had ongoing mechanical back pain symptoms associated with her degenerative condition which represented chronic lumbar strain symptoms that were not related to her work injury. He opined that the employment-related aggravation of appellant's condition had resolved, noting that she had reported degenerative lumbar-type pain prior to her injury and that her overall condition continued to deteriorate due to associated degenerative processes and her overall deconditioning.

By decision dated March 18, 2010, the Office finalized the termination of compensation benefits effective March 19, 2010. It found the weight of the evidence rested with the opinion of Dr. Fuller, the second opinion physician.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.³ It may not terminate compensation without establishing that disability ceased or that it was no longer related to the employment.⁴ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵

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

ANALYSIS

The Office accepted that appellant sustained a cervical and lumbar strain. It terminated her compensation benefits effective March 19, 2010 on the grounds the accepted conditions had resolved without residuals. The Office accorded determinative weight to the opinion of Dr. Fuller, the second opinion specialist.

The Board finds Dr. Fuller's opinion is sufficiently rationalized to establish that appellant's employment-related back and neck conditions had resolved. In a comprehensive report dated November 9, 2009, which incorporated his October 21, 2009 examination findings, Dr. Fuller reviewed the statement of accepted facts and the medical record. He advised that appellant had lumbar degenerative disc disease, lumbar facet arthritis, chronic lumbar strain, chronic cervical strain and obesity. Dr. Fuller stated that appellant's mechanical back pain symptoms associated with her degenerative condition represented a chronic lumbar strain that was not directly related to her reported injury. He stated that the aggravation associated with the work injury had resolved. Dr. Fuller noted that the medical record reported appellant's complaints of degenerative lumbar-type pain prior to her injury and stated that her condition continued to deteriorate because of the degenerative process and her overall deconditioning. He also opined that the cervical strain associated with the work injury had resolved. Dr. Fuller noted that current examination findings were attributable to appellant's degenerative process and overall deconditioning. He opined that appellant's accepted cervical and lumbar spine strains

³ *Jorge E. Sotomayor*, 52 ECAB 105, 106 (2000).

⁴ *Mary A. Lowe*, 52 ECAB 223, 224 (2001).

⁵ *See Del K. Rykert*, 40 ECAB 284 (1988).

⁶ *T.P.*, 58 ECAB 524 (2007).

⁷ *I.J.*, 59 ECAB 408 (2008); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

resolved no later than one year after the injury occurred. Dr. Fuller explained that muscle and ligamentous strain associated with an injury generally resolve within six months of injury and any persistent muscle or ligamentous strain can be attributed to more chronic conditions or overall deconditioning process. In his February 24, 2010 report, he stated that the work-related aggravation of appellant's condition had resolved and that appellant's continued mechanical back pain symptoms represented chronic lumbar strain symptoms which were associated with her degenerative condition. Dr. Fuller stated that appellant had preexisting degenerative disc disease which predated her reported injury and noted that she reported degenerative lumbar-type pain prior to her injury in her medical records. He advised that appellant's overall condition continued to deteriorate because of the associated degenerative processes as well as her overall deconditioning.

Dr. Sikes and Dr. Dick opined that appellant continued to have post-traumatic low back pain which rendered her permanently and totally disabled. The physicians, however, failed to discuss the accepted cervical and lumbar strains or provide a rationalized opinion addressing how residuals of the accepted conditions caused disability. Neither Dr. Sikes nor Dr. Dick provided any objective findings other than appellant's subjective complaints of pain or provided an explanation as to how appellant's work-related conditions remained active or disabling. The record establishes that she had preexisting degenerative conditions that preexisted the accepted strains of December 24, 1991. Neither Dr. Sikes nor Dr. Dick provided any medical reasoning explaining why appellant's current back pain and deteriorating conditions were due to the accepted low back and neck strains and not due to her preexisting conditions. In his October 20, 2009 report, Dr. Dick diagnosed conditions such as osteoarthritis, bursitis and degenerative disc disease. The Office did not accept these conditions as employment related. Dr. Dick did not adequately explain how these conditions were due to appellant's work injury.⁸ While Dr. Sparks, a second opinion physician, opined in July 2008 that her current back problem resulted from the permanent aggravation of her degenerative discs from the work injury, he provided little medical reasoning supported by objective evidence to explain how or why the aggravation continued. The medical evidence of record, at the time the Office terminated benefits, did not provide adequately reasoned support to support ongoing residuals of the accepted lumbar or cervical sprains.

Dr. Fuller's reports are based on an accurate factual background and provide medical rationale for his conclusion.⁹ The Office, therefore, met its burden of proof to terminate appellant's medical benefits as the weight of the medical evidence indicates that the accepted back and neck conditions had ceased.

⁸ See *S.R.*, 61 ECAB ___ (Docket No. 09-2332, issued August 16, 2010) (for conditions not accepted by the Office as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not the Office's burden to disprove such relationship).

⁹ *Michael S. Mina*, 57 ECAB 379 (2006) (in assessing medical evidence, the weight of such evidence is determined by its reliability, its probative value and its convincing quality, the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion, are facts which determine the weight to be given to each individual report).

On appeal, appellant argues her preexisting osteoarthritis was aggravated by the work injury. As noted above, there is no probative narrative report on the issue of whether residuals of the accepted conditions continue to disable appellant.

CONCLUSION

The Board finds that the Office properly terminated appellant's wage-loss and medical benefits effective March 19, 2010.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated March 18, 2010 is affirmed.

Issued: March 1, 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