United States Department of Labor
Employees' Compensation Appeals Board

H.S., Appellant	)	
and	)	**Docket No. 10-1220**
	)	**Issued: May 24, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Virginia Beach, VA, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 30, 2010 appellant filed a timely appeal from the March 4, 2010 merit decision of the Office of Workers' Compensation Programs affirming the termination of her compensation benefits. Pursuant to the Federal Employees' Compensation Act[1] and 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 compensation benefits effective August 12, 2009.

FACTUAL HISTORY

On April 19, 2008 appellant, then a 42-year-old letter carrier, stepped off a curb while delivering mail and heard a pop and experienced pain in her low back radiating into her left leg.

[1] 5 U.S.C. § 8101 *et seq.*

She worked periods of modified duty from the date of injury. The Office accepted appellant's claim for sciatica and paid compensation benefits.

In an April 30, 2008 report, Dr. Nelson M. Karp, a general practitioner, diagnosed a lumbosacral strain with sciatica and probable herniated nucleus pulposus lumbar spine.

In a May 14, 2008 report, Dr. Petra Gurtner, a Board-certified neurosurgeon, noted a history of the April 19, 2008 injury and presented findings on examination, which were essentially normal. She advised that a May 9, 2008 magnetic resonance imaging (MRI) scan of the lumbar spine did not show any significant spinal stenosis and there were no significant disc herniations. Dr. Gurtner noted a very small interior foraminal disc on the left at L4-L5 as well as a small moderate far lateral disc protrusion at L2-L3, which did not seem to affect the nerve root. She opined that appellant's problem was most likely due to an inflammatory change at the sacroiliac joint, particularly at the left L5-S1 facet joint.

In a July 1, 2008 report, Dr. Karp noted that appellant still experienced pain down her left leg in a sciatic-like fashion. He stated that the May 9, 2008 MRI scan of the lumbar spine demonstrated a left far lateral disc protrusion at the L2-L3 and the L4-L5 level. Dr. Karp set forth examination findings and diagnosed herniated nucleus pulposus of the lumbar spine and sciatica.

On September 5, 2008 appellant was treated by Dr. Arthur W. Wardell, a Board-certified orthopedic surgeon,[2] who reviewed a history of the April 19, 2008 injury and her medical treatment. On examination, Dr. Wardell noted symmetrical thigh, knee and calf circumferences with left trochanteric tenderness and left sacroiliac tenderness. Straight leg raising was positive at 60 degrees for left sided back pain. Dr. Wardell advised that x-rays were obtained that showed the hip and sacroiliac joints to be normal with no fracture or degenerative changes noted of the lumbosacral spine. An MRI scan obtained that day revealed a left disc protrusion at L4-5. Dr. Wardell prescribed a course of lumbar decompression therapy and epidural steroid injections.

On September 10, 2008 appellant was diagnosed with a lumbar strain, radiculopathy and degenerative disc disease of the lumbar spine at a local emergency room. A September 10, 2008 MRI scan revealed mild degenerative changes of the lumbar spine and mild posterior displacement of the left L3 nerve root at L3-L4 due to intra foraminal perineural cyst. Dr. Wardell provided impressions of lumbosacral radiculopathy, L4-L5 disc herniation and left sciatica. He took appellant off work on September 17, 2008 and found her totally disabled as of December 13, 2008. Dr. Wardell noted that a January 21, 2009 lumbar MRI scan showed a small left perineural cyst at L3-L4. In a January 26, 2009 report, he advised that appellant's diagnoses were lumbosacral radiculopathy, L4-L5 disc injury and left sciatica. Dr. Wardell reiterated that she was totally disabled.

In a January 21, 2009 report, Dr. Gurtner diagnosed back pain, small left L4-L5 foraminal disc herniation and small left L3-L4 foraminal disc herniation as being related to the April 19, 2008 work incident. On April 28, 2009 appellant underwent additional diagnostic

[2] Appellant's physician Dr. Karp, a general practitioner, referred appellant to Dr. Gurtner, a Board-certified neurosurgeon, who subsequently referred her to Dr. Wardell.

testing, which included a lumbar myelogram and a computerized axial tomography scan. In a May 14, 2009 report, Dr. Gurtner noted the history of injury as well as the results of the recent diagnostic tests. She diagnosed a large left L3-L4 lateral disc herniation which affected the left L3 root and caused weakness of the left hip flexor. Dr. Gurtner noted that appellant's small left L2-L3 disc protrusion was not symptomatic. She opined that appellant was a candidate for a left L3-L4 lateral facetectomy and microdiscectomy.

The Office referred appellant, together with the medical record, a statement of accepted facts and a list of questions, to Dr. Steven C. Blasdell, a Board-certified orthopedic surgeon, who was asked to address whether she had residuals of the accepted condition and her capacity for work. In a May 28, 2009 report, Dr. Blasdell reviewed the history of injury and medical treatment. On examination, he noted diffuse paralumbar tenderness and negative straight-leg raising in the seated position but positive in the supine position at 10 degrees. Dr. Blasdell listed an impression of low back pain behavior, left L3-L4 perineural Tarlov's cyst and mild degenerative disc disease of the lumbar spine. He opined that none of the conditions present were medically connected to the April 19, 2008 injury; rather, they were preexisting and nonoccupational in nature. Dr. Blasdell stated that there were no objective findings of any residuals from the accepted work injury. Lumbar MRI scans did not demonstrate any traumatic abnormalities and, on examination, there were multiple nonphysiologic responses indicative of symptom magnification. Dr. Blasdell stated that appellant's subjective complaints were out of proportion to the objective clinical findings. He found that she could return to full-time work with restrictions based on her subjective complaints but not necessitated by the accepted sciatica condition.

On July 9, 2009 the Office proposed to terminate appellant's compensation. It found that the weight of the medical opinion was represented by Dr. Blasdell who found that her accepted sciatica condition had resolved and her current medical conditions and disability were not related to work. The Office allowed appellant 30 days to submit additional evidence.

In response, appellant submitted treatment notes from Dr. Wardell dated March 24 to July 27, 2009. They included review of a March 24, 2009 functional capacity evaluation and a July 23, 2009 request for physical therapy. Dr. Wardell noted that appellant was awaiting authorization for surgery.

In an August 12, 2009 decision, the Office terminated appellant's compensation benefits effective that day.

On September 1, 2009 appellant requested a telephonic hearing before an Office hearing representative, which was held on December 14, 2009. She advised that she had worked four hours a day and most recently worked in December 2008. Appellant stated that her need for surgery was directly related to her work injury.

In an August 7, 2009 report, Dr. Wardell advised that appellant had been under his care since September 5, 2008 for lumbosacral radiculopathy and disc herniation incurred as a result of the April 19, 2008 work injury. He found that she was still symptomatic and had objective residuals of injury. Dr. Wardell opined that appellant was totally disabled from work but would be able to return to work after surgery. In a January 5, 2010 report, he asserted that her left

sciatica was a result of an L3-L4 disc protrusion. Appellant had no past history of any low back complaints; but experienced a sudden onset of low back pain immediately after the April 19, 2008 injury. Dr. Wardell stated that he disagreed with Dr. Blasdell's opinion that her pain was due to degenerative changes unrelated to the accepted injury.

By decision dated March 4, 2010, an Office hearing representative affirmed the August 12, 2009 termination decision, finding that the opinion of the second opinion physician, Dr. Blasdell, represented the weight of the medical evidence and established that appellant's work-related condition and disability had resolved. The hearing representative found, however, that, following the termination, a conflict of medical opinion arose between Dr. Wardell and Dr. Blasdell. Accordingly, the case was remanded for further development of the medical evidence.

LEGAL PRECEDENT

Once the Office has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.[3] Having determined that, an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either 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 compensation.[5] To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.[6]

ANALYSIS

The Office accepted appellant's claim for sciatica. Appellant was taken off work by her attending orthopedic surgeon, Dr. Wardell, who recommended surgery for a lumbar disc herniation at L4-L5 that resulted in her left sciatica. Dr. Wardell advised that appellant was totally disabled as of December 13, 2008 due to residuals of her accepted condition.

The Office referred appellant to Dr. Blasdell, a second opinion specialist Board-certified in orthopedic surgery. On May 28, 2009 Dr. Blasdell examined her and noted mild degenerative changes of the lumbar spine that were unrelated to the April 19, 2008 injury. He advised that appellant's diagnostic studies did not demonstrate any traumatic abnormalities and commented that there were nonphysiologic responses during clinical examination. Dr. Blasdell advised that appellant return to her regular employment.

[3] *Bernadine P. Taylor*, 54 ECAB 342 (2003).

[4] *Id.*

[5] *Roger G. Payne*, 55 ECAB 535 (2004).

[6] *Pamela K. Guesford*, 53 ECAB 726 (2002).

The Board finds that the Office did not meet its burden of proof to terminate appellant's wage-loss and medical benefits as of August 12, 2009. As of that date a conflict in medical opinion existed between Dr. Wardell and Dr. Blasdell, both Board-certified orthopedic surgeons. Each physician had the opportunity to examine appellant and review the diagnostic studies of record. Dr. Wardell noted that appellant had been treated since September 5, 2008 for sciatica that he related to the accepted injury. He found that she was disabled as of December 13, 2008 and recommended surgery to treat residuals of the April 19, 2008 injury. Dr. Blasdell reported an accurate history of injury but attributed appellant's low back complaints to degenerative disc disease of the lumbar spine at L3-L4 that was unrelated to the April 19, 2008 injury. He recommended against surgery and that she return to work with restrictions based on her subjective complaints. It is well established that where there exist opposing medical reports of virtually equal weight and rationale, the case should be referred to an impartial medical specialist for the purpose of resolving the conflict.[7] The Board notes that the reports and treatment records of Dr. Wardell were of record prior to the August 12, 2009 termination decision of the Office. For this reason, the Board finds that the Office hearing representative erred by finding the conflict was created only after the termination of compensation benefits.

CONCLUSION

The Board finds that the Office did not meet its burden of proof to terminate appellant's compensation benefits as of August 12, 2009 due to a conflict in medical opinion.

[7] *See Darlene R. Kennedy*, 57 ECAB 414 (2006).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated March 4, 2010 be reversed.

Issued: May 24, 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