

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

C.M., Appellant)

and)

DEPARTMENT OF THE ARMY, MILITARY)
ENLISTMENT PROCESSING CENTER,)
Rock Island, IL, Employer)

Docket No. 11-503
Issued: October 19, 2011

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

Oral Argument September 8, 2011

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 23, 2010 appellant filed a timely appeal from the Office of Workers' Compensation Programs' (OWCP) merit decision dated November 19, 2010. Pursuant to the Federal Employees' Compensation Act¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue on appeal is whether OWCP properly terminated appellant's wage-loss compensation benefits effective November 21, 2010.

FACTUAL HISTORY

On July 13, 2009 appellant, then a 52-year-old supervisory equal employment specialist, file a traumatic injury claim. She indicated that on July 10, 2009 she was injured when her platform shoe was caught on an elevator groove, causing her to trip into the elevator and fall on her hands

¹ 5 U.S.C. § 8101 *et seq.*

and knees and hit her head, causing neck pain. Appellant stopped work on July 11, 2009. On October 27, 2009 OWCP accepted the claim for sprain of neck, sprain of left ankle, sprain of right wrist, sprain of right elbow and forearm, sprain of right shoulder and upper arm and contusion of left knee. On September 14, 2010 it expanded the claim to include aggravation of degenerative cervical disc disease and aggravation of degenerative lumbar disc disease. Appellant received compensation for injury-related disability for work.

Appellant received treatment from numerous physicians who submitted reports. They included reports from Dr. Theresa Kepic, an obstetrician and gynecologist, who advised that appellant continued to be disabled due to July 10, 2009 injury. In a May 3, 2010 report, Dr. Rory Farris, an orthopedic surgeon, reported bilateral knee osteoarthritis, left ankle and cervical sprains, left thigh pain and lumbar radiculopathy and advised that appellant was not working. He recommended a treatment of physical therapy and a home exercise program.

On May 17, 2010 OWCP referred appellant to Dr. James C. Owen, a Board-certified orthopedic surgeon, for a second opinion to assess her work-related condition. In a June 15, 2010 report, Dr. Owen described the history of injury and treatment, which included that she went through weeks of physical therapy, a lumbar epidural, which was unsuccessful due to pain and two epidurals under sedation, which she related "helped her back and leg pain considerably." On examination he noted that, when appellant got up from a sitting to a standing position, she had sharp complaints of pain in her back and used her arms to get up and down. Dr. Owen advised that she had marked valgus of the knees, marked flattening of the longitudinal arch of her feet and marked increased lumbar lordosis of her lumbar spine. Additionally, he determined that appellant had decreased sensation in her cervical spine of approximately 50 percent normal, a positive Waddell signs and range of motion in the right shoulder and lumbar spine that was 50 percent normal. Dr. Owen diagnosed degenerative cervical disc disease; degenerative lumbar disc disease with strain pattern; a healed right knee contusion; and chronic left ankle strain with residual swelling secondary to valgus foot. He also diagnosed valgus knee with chondromalacia degenerative arthritis of the cervical and lumbar spine, which were not work related.

Dr. Owen indicated that his objective findings supported a residual medical problem, which included that appellant's condition was aggravated by her present body habitus of marked increased lumbar lordosis, extreme obesity and a large amount of breast tissue, which aggravated her cervical and parascapular pain. He opined that her injury aggravated preexisting degenerative cervical and lumbar disc disease. Dr. Owen opined that appellant reached maximum medical improvement. He indicated that she would benefit from a loss of 100 to 150 pounds of weight along with breast reduction, which would help her upper and lower extremities. Dr. Owen recommended a functional capacity evaluation. He opined that he found no condition that made appellant totally or partially disabled. Dr. Owen stated that she was capable of performing her full duties as a supervisor, equal employment specialist, with restrictions to allow her to get from a sitting to a standing position on an as needed basis. He completed a work capacity evaluation form and noted that appellant was able to work eight hours per day, with a 10-pound pushing, pulling and lifting restriction, no squatting, kneeling or climbing and a bending, stooping limitation.

In an August 20, 2010 report, Dr. Kepic advised that she disagreed with Dr. Owens as appellant continued to suffer from chronic pain to include: headache, neck pain, pain in bilateral arms, wrist, hand/numbness, lower back pain, bilateral hip and bilateral lower extremity pain (radiculopathy) and left foot pain. She advised that there were many outstanding issues related to

the July 10, 2009 work injury, which caused pain and affected appellant's mobility, issues that she did not have before the accident. Dr. Kopic indicated that appellant continued to have problems sitting or standing for more than one hour, without increases in her pain and the need to change positions or to take pain medications. She noted that the physical therapy must stop as it caused aggravating pain. Dr. Kopic explained that further work up was needed. She advised that appellant was not capable of any employment until further investigation and treatment could be rendered. Dr. Kopic explained that appellant might further aggravate her already chronic injuries that resulted from the July 10, 2009 injury, which could lengthen the time of unemployability related to the work injury. She completed an August 25, 2010 work capacity evaluation advising that appellant had not reached maximum improvement as she continued having persistent mobility issues and chronic pain. Dr. Kopic explained that appellant's pain levels would not allow her to return to work as she had limitations in her neck, upper extremities and weakness/numbness in her lower back and legs.

On September 30, 2010 OWCP issued a notice of proposed termination of compensation. It proposed to terminate appellant's wage-loss compensation as the report of Dr. Owen established that she could return to her regular duties.

OWCP received additional medical evidence which included a July 28, 2010 treatment notes from Dr. David Evans, a Board-certified anesthesiologist; October 5, 13 and 26, 2010 reports from Dr. Farris; and an October 20, 2010 report from Dr. Thomas Snickenberger, a Board-certified orthopedic surgeon. It also received several reports from Dr. Hien Dang, a neurologist, dated August 16 and October 20 and 21, 2010. In his October 21, 2010 reports, Dr. Dang disagreed with Dr. Owen. He advised that appellant continued to suffer from chronic pain, headaches, neck pain with spasms, pain in bilateral arms (wrists and hands), numbness, lower back pain, bilateral hip and bilateral lower extremity pain and left foot pain/swelling. Dr. Dang advised that she had numerous issues related to sitting or standing for more than one hour without increases in pain or the need to change positions, lay down or take pain medications.

In an August 12, 2010 letter, appellant indicated that she was withdrawing from law school due to medical reasons. She also provided an October 26 and December 5, 2010 statement pertaining to her claim and a November 3, 2010 statement from a carpenter, attesting to her limited abilities.

By decision dated November 19, 2010, OWCP terminated appellant's wage-loss benefits effective November 21, 2010 on the grounds that she was no longer totally or partially disabled.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.² 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

² *Curtis Hall*, 45 ECAB 316 (1994).

³ *Jason C. Armstrong*, 40 ECAB 907 (1989).

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 the analysis manifested and the medical rationale expressed in support of the physician's opinion are facts which determine the weight to be given each individual report.⁴

ANALYSIS

In the present case, appellant's treating physicians generally indicated that appellant remained disabled and unable to work due to her accepted conditions. OWCP terminated her wage-loss benefits based upon the June 15, 2010 report of Dr. Owen, the second opinion physician, who opined that she had reached maximum medical improvement and that she no longer remained disabled from work with the exception of various light-duty restrictions.

However, the Board finds that Dr. Owen's report is insufficient to establish that appellant's disability had ceased, as he failed to explain how he arrived at his conclusion that she was no longer disabled due to her accepted employment injury. The Board notes that he determined that she could perform her regular activities as a supervisor and office worker, but he provided little reasoning and no clear findings to support how he arrived at this conclusion. This need for reasoning is especially important where Dr. Owen found that appellant had no condition that would make her totally or partially disabled yet he indicated that she had work restrictions and certain positive findings on examination. His findings included that she had motion in the cervical spine and limbs which was 50 percent of normal. However, Dr. Owen advised that he could find no weakness in appellant's upper or lower extremities, despite noting that she had difficulty getting from a sitting or a standing position. He also did not explain why he placed a limitation on bending and stooping, as well as squatting, kneeling and climbing in his completed work capacity evaluation. Dr. Owen also indicated that appellant could not push, pull or lift more than 10 pounds. He appeared to attribute her problems on her weight and breast size. However, Dr. Owen did not address the impact of previous treatments that appellant received. Furthermore, he suggested additional treatment in the form of a functional capacity evaluation which was not performed. Absent a well-rationalized medical opinion in support of Dr. Owen's conclusions, the report of Dr. Owens is of limited probative value.⁵

The Board finds that Dr. Owen's June 15, 2010 report is insufficiently rationalized to establish that appellant was no longer totally disabled and able to perform the full duties of her position as a supervisory equal employment specialist. Dr. Owen failed to provide a reasoned opinion to support that there were no current objective findings of continuing disability due to the July 10, 2009 work injury. OWCP did not meet its burden of proof to terminate wage-loss compensation.

⁴ See *Connie Johns*, 44 ECAB 560 (1993).

⁵ See *Connie Johns*, 44 ECAB 560, 569 (1993), citing *Philip J. Deroo*, 39 ECAB 1294, 1298 (1988); (finding a physician's opinion on causal relationship must be one of reasonable medical certainty, supported by affirmative evidence, explained by medical rationale and based on a complete and accurate medical and factual background).

CONCLUSION

The Board finds that OWCP did not meet its burden of proof in terminating appellant's compensation benefits effective November 21, 2010 on the grounds that she was able to perform her full duties as a supervisory equal employment specialist.

ORDER

IT IS HEREBY ORDERED THAT the November 19, 2010 decision of the Office of Workers' Compensation Programs is reversed.

Issued: October 19, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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