

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

C.D., Appellant)

and)

U.S. POSTAL SERVICE, GENERAL MAIL)
FACILITY, Boston, MA, Employer)

Docket No. 11-1789
Issued: September 23, 2011

Appearances:

Francis J. Hurley, 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 July 20, 2011 appellant filed a timely appeal from an April 12, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether OWCP met its burden of proof to terminate appellant's monetary compensation effective August 30, 2010 on the grounds that she was no longer disabled due to a May 6, 2009 employment injury.

On appeal, counsel asserts that OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation because the opinion of the second opinion examiner was not based on a proper factual and medical background. In the alternative, conflict in medical opinion was created.

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On May 6, 2009 appellant, then a 50-year-old part-time mail handler, was injured while manually unloading trucks on the loading dock. She was taken to the hospital where she spent the night.² OWCP accepted that appellant sustained an employment-related left wrist sprain, contusion of the left elbow, a bilateral shoulder sprain and a thoracolumbar sprain of the back. Appellant did not return to work.

In reports dated May 12 to July 9, 2009, Dr. Olarewaju J. Oladipo, an orthopedic surgeon, provided findings on examination and advised that he was treating appellant for acute pain management. He diagnosed left elbow contusion, thoracolumbar sprain/strain, left wrist sprain, bilateral shoulder sprain, and headache and advised that appellant could not work.

On July 20, 2009 OWCP requested that Dr. Oladipo provide an opinion regarding appellant's return to work and if she had reached maximum medical improvement. In a July 22, 2009 response, Dr. Oladipo listed his fee for reviewing appellant's record. He provided additional reports describing appellant's physical findings and treatment. Dr. Oladipo diagnosed metatarsalgia and limb edema.

By letter dated October 16, 2009, OWCP informed appellant that a medical management nurse was assigned to facilitate her recovery. The nurse made numerous attempts to contact appellant by telephone and correspondence. Appellant did not respond and the nurse visitation case was closed.

In December 2009 OWCP scheduled a second opinion evaluation with Dr. Joel A. Saperstein, a Board-certified orthopedic surgeon, at 10:30 a.m. on December 14, 2009. Appellant did not attend the scheduled appointment.

On December 22, 2009 OWCP proposed to suspend her compensation benefits on the grounds that she failed to appear for the examination scheduled with Dr. Saperstein.³

In a January 21, 2010 decision, OWCP finalized the proposed suspension effective January 7, 2010.

Appellant subsequently submitted to examination. By report dated April 9, 2010, Dr. Saperstein noted the history of injury, review of the medical record, and the statement of accepted facts, and appellant's complaint of constant back pain, worse when up and walking and her job duties. Throughout the interview, appellant was very verbal and appeared distraught, extremely fatigued and angry. Dr. Saperstein advised that she had a poor memory and did not have an accurate recollection of the diagnoses made by Dr. Oladipo. On examination, appellant's heel-toe gait was normal, and there was no specific weakness of extensors of her toes and no peripheral edema in the legs. Ankle motion was slightly limited. Peripheral circulation was good, and calf measurement was equal bilaterally. Upper extremity and lower extremity peripheral reflexes were normal. Neck and shoulder motion were normal in all directions and

² The record contains the hospital report of discharge instructions.

³ Physical therapy services were discontinued on December 24, 2009 secondary to noncompliance. The physical therapist noted that appellant stated that she was in too much pain to do physical therapy and would not return.

reflexes were intact. Appellant had a small cyst-like formation over the abductor tendons of the right wrist. She had full motion about the elbow, wrist and hand on the left side. Dr. Saperstein advised that appellant's back demonstrated a somewhat increased lordosis, and she could only flex forward holding her hands on her knees, and could not flex any further when standing, although she was able to sit on the examining table with her knees flexed to 90 degrees. He stated that she exhibited mild pain on extension and rotation of her back. Hip and knee examinations were normal. Dr. Saperstein found no indication of radiculopathy and no neurological deficit. He opined that appellant had subjective pain, not verified by any significant objective findings, with significant Waddelian findings.

Dr. Saperstein diagnosed significant behavioral abnormality, with chronic unverifiable back pain; back strain, resolved; shoulder, elbow and wrist pain, left, resolved; and cyst on the right wrist, not related to the industrial trauma. He found that appellant did not have any significant residuals of the accepted employment-related conditions. There was no documentation or indication that she had radiculopathy and no record that a magnetic resonance imaging (MRI) scan study had been obtained. Dr. Saperstein advised that appellant was fully recuperated from her multiple contusions and back strain, and suffered from a behavioral abnormality of an unknown causation. He advised that she did not need further pain management or further orthopedic treatment, and that the use of narcotic medication was inappropriate. Dr. Saperstein recommended evaluation by a psychologist. He concluded that appellant could return to work as a mail handler for 40 hours per week. In an attached work capacity evaluation, Dr. Saperstein advised that she had reached maximum medical improvement and could perform her usual job without restrictions.

Dr. Oladipo submitted reports with an additional diagnosis of left sacroiliac joint pain. He advised that appellant could not return to work. On June 13, 2010 Dr. Oladipo noted her complaints of low back pain, headache, bilateral elbow pain, upper back pain, left elbow swelling, left wrist pain with swelling, bilateral foot pain and bilateral leg swelling. He stated that appellant's gait had improved and that right upper extremity and left elbow, wrist and shoulder were normal on examination. Thoracolumbar spine examination demonstrated severe tenderness over the paraspinal musculature and significant spasm with limited range of motion. Straight leg raise was normal and there was no neurological deficit. Dr. Oladipo noted that multiple radiological studies were reviewed and diagnosed left elbow contusion, thoracolumbar sprain/strain, left wrist sprain, left shoulder sprain, right shoulder sprain, headache, bilateral metatarsalgia, limb edema, left sacroiliac joint pain and myofascial syndrome. He advised that appellant was unfit to return to work.

In a letter dated July 20, 2010, OWCP proposed to terminate appellant's monetary compensation on the grounds that the medical evidence, as characterized by Dr. Saperstein's report, established that she was no longer disabled due to her work-related conditions. Appellant submitted an unsigned treatment note.⁴ In an attached disability slip, signed by Margarita Hermosa, a nurse practitioner, advised that appellant was considered unfit to return to work. Dr. Oladipo signed a similar slip on August 19, 2010.

⁴ Physical examination of the thoracolumbar spine demonstrated increased severity in tenderness in the paraspinal musculature with localized tenderness in the sacroiliac joint and limited range of motion. Straight leg raise was normal and there was no neurological deficit. Left elbow, wrist and shoulder were normal to examination, as was the right upper extremity.

By decision dated August 23, 2010, OWCP finalized the termination of wage-loss compensation, effective August 29, 2010. Appellant was still entitled to medical benefits for the accepted condition.

Appellant, through her attorney, timely requested a hearing. In reports dated August 19, 2010 to January 6, 2011, Dr. Oladipo reiterated his previous findings and conclusions, including that appellant's upper extremity examination was normal and that she had significant tenderness and spasm in the lumbar and sacroiliac region with decreased range of motion. He stated that multiple radiological studies were reviewed and advised that she could not work.

At the January 19, 2011 hearing, appellant described her job duties. She stated that on the date of injury she felt her back snap, her legs gave out, and she fell and blacked out for a few minutes. Appellant was taken by ambulance to the hospital and was kept overnight and began treatment with Dr. Oladipo shortly thereafter. She described constant, radiating back pain which limited standing and walking. Appellant contended that Dr. Saperstein was extremely unprofessional, conducted a very brief examination and did not examine her back. Her attorney argued that Dr. Oladipo's reports represented the weight of medical opinion. Appellant submitted reports from Dr. Oladipo dated November 11, 2010 to March 17, 2011.

By decision dated April 12, 2011, an OWCP hearing representative found that the weight of the medical evidence rested with the opinion of Dr. Saperstein and affirmed the August 23, 2010 decision.

LEGAL PRECEDENT

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.⁵ 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.⁶

ANALYSIS

The Board finds that OWCP met its burden of proof to terminate appellant's monetary compensation effective August 30, 2010. OWCP accepted that on May 6, 2009 appellant sustained a wrist sprain, contusion of the left elbow, a bilateral shoulder sprain, and a thoracolumbar sprain when she was injured while unloading postal trucks. Appellant did not return to work and received wage-loss compensation.⁷ By decision dated August 23, 2010, OWCP terminated her compensation effective August 30, 2010, on the grounds that the medical evidence established that she could return to her regular duties.

OWCP terminated benefits based on Dr. Saperstein's April 9, 2010 second opinion evaluation. Dr. Saperstein noted the history of injury, reviewed the statement of accepted facts

⁵ *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁶ *Id.*

⁷ *Supra* note 4.

and medical record and appellant's complaint of constant back pain. He provided physical examination findings, stating that she had no indication of radiculopathy and no neurological deficit. Dr. Saperstein opined that appellant had subjective pain, not verified by any significant objective findings, with significant Waddelian findings. He diagnosed significant behavioral abnormality, with chronic unverifiable back pain; back strain, resolved; shoulder, elbow and wrist pain, left, resolved; and cyst on the right wrist, not related to the industrial trauma. Dr. Saperstein advised that appellant was fully recuperated from her multiple contusions and back strain, and suffered from a behavioral abnormality with an unknown causation. He stated that she had reached maximum medical improvement and was capable of returning to full-time work as a mail handler with no restrictions and needed no further pain management or orthopedic treatment.

Appellant submitted a number of medical reports in which Dr. Oladipo diagnosed conditions that were not accepted as employment-related, *i.e.*, headache, metatarsalgia, limb edema, left sacroiliac pain and myofascial syndrome. It is her burden to provide rationalized medical evidence sufficient to establish causal relation for conditions not accepted by OWCP as being employment related.⁸ Dr. Oladipo did not provide adequate explanation as to how these conditions were caused by the May 6, 2009 employment injury. Moreover, his diagnoses regarding the upper extremities are not consistent with his findings on physical examination since he explained that appellant had normal upper extremity examinations. While Dr. Oladipo diagnosed spasm and tenderness of the thoracolumbar spine, he did not explain why the thoracolumbar strain that occurred on May 9, 2009 continued to cause disability from work. He advised that appellant could not return to work but provided no explanation for this conclusion. Dr. Oladipo did not provide a rationalized explanation as to how or why the accepted thoracolumbar sprain caused her continuing disability and his reports are of limited probative value.⁹

The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.¹⁰ The Board finds that the weight of the medical evidence rests with the April 9, 2010 second opinion evaluation of Dr. Saperstein. Contrary to appellant's argument on appeal, Dr. Saperstein provided a comprehensive evaluation based on his review of the statement of accepted facts and medical record, the history of injury, her complaints of continued back pain and physical examination findings. He advised that she had recovered from the injuries sustained on May 6, 2009, that there was no need for further treatment referable to this injury, and that she could return to her usual job of mail handler without restrictions. The Board finds that, as there is no reasoned contemporaneous medical evidence supporting appellant's claim for continuing disability, OWCP properly found that appellant had no disability

⁸ *Alice J. Tysinger*, 51 ECAB 638 (2000).

⁹ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factor. The opinion of a physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factor identified by the claimant. *Sedi L. Graham*, 57 ECAB 494 (2006).

¹⁰ *C.B.*, Docket No. 08-1583 (issued December 9, 2008).

due to the May 9, 2009 employment injury and terminated her monetary compensation effective August 30, 2010.¹¹

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 met its burden of proof to terminate appellant's monetary compensation effective August 30, 2010.

ORDER

IT IS HEREBY ORDERED THAT the April 12, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 23, 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

¹¹ The Board notes that the reports from Ms. Hermosa do not constitute competent medical evidence as nurses and physicians' assistants are not "physicians" as defined under FECA and their opinions are of no probative value. *S.E.*, Docket No. 08-2214 (issued May 6, 2009).