

ISSUE

The issue is whether OWCP properly terminated appellant's compensation and medical benefits effective January 25, 2011 on the grounds that her work-related injury ceased without residuals.

On appeal, appellant contends that the impartial medical examiners were not given an accurate statement of the accepted facts or all appropriate medical test results and that she was not provided vocational rehabilitation.

FACTUAL HISTORY

This case has previously been before the Board. The facts as set forth in the Board's prior decisions are hereby incorporated by reference.³

Appellant received treatment from Dr. Samuel J. Chmell, a Board-certified orthopedic surgeon. In a July 29, 2010 report, Dr. Chmell listed his diagnosis as lumbar disc herniation. He placed restrictions on appellant, but stated that she could return to work within these restrictions but needed to remain cautious.

On July 22, 2010 OWCP referred appellant to Dr. James P. Elmes, a Board-certified orthopedic surgeon, for a second opinion examination. In an August 27, 2010 report, Dr. Elmes reviewed appellant's medical records and the results of his examination. He diagnosed: (1) nonspecific low back pain; (2) right lumbar radiculopathy by electromyogram (EMG) study of March 21, 2007; (3) small central herniated lumbar disc at L5 by computerized tomography (CT) myelogram on January 29, 2002; (4) mild L5-S1 facet arthropathy; (5) nonspecific right knee pain; (6) nonspecific pain cleft left foot; (7) bilateral mild hallux valgus with bunions. Dr. Elmes concluded that appellant was unable to perform her preinjury work. He did not find a causal relationship between appellant's employment-related injury and her current diagnoses. Dr. Elmes noted that appellant's main current complaint was low back pain radiating to the right leg, and there were no positive physical examination findings of tendinitis or strains of either foot or ankle, no right-sided tarsal tunnel syndrome, or any Morton's neuroma of the right foot. He noted that the EMG on December 17, 1999 showed radiculopathy of three nerve roots (right L3, L4 and L5). Dr. Elmes noted that the EMG of March 21, 2007 showed only right L5 radiculopathy. He concluded that the radiculopathy was improving, since only one nerve root was involved compared to three nerve roots in December 1999. Dr. Elmes concluded that since the radiculopathy was improving and she stopped working in 2001, appellant's work caused a temporary aggravation which ceased to be an aggravating factor when she stopped work in 2001. He also noted that appellant had no objective physical findings of spasm, atrophy or neurological

³ Docket No. 09-1835 (issued June 21, 2010) (the Board found that OWCP improperly suspended appellant's compensation benefits as it failed to give her proper notice); Docket No. 09-278 (issued September 22, 2009) (the Board founds that OWCP properly denied appellant's request for reconsideration and also properly denied appellant's request for review of the written record as she had previously requested reconsideration). On April 5, 2000 appellant filed an occupational disease claim alleging that as a result of her federal duties as a letter carrier, she sustained, from lumbar radiculopathy, pain in her right leg and right foot and arthropathy on the right side at L4 and L5. Appellant stopped work on January 22, 2001. OWCP accepted her claim for lumbar radiculopathy radiating to the right leg.

change on prior evaluations or on his evaluation. Dr. Elmes noted that appellant took no current pain medication and that neither the CT myelogram or lumbar magnetic resonance imaging (MRI) scan studies established any right L5 nerve impingement. He found that appellant could return to work at light duty.

On September 27, 2010 OWCP referred appellant to Dr. G. Klaud Miller, a Board-certified orthopedic surgeon, to resolve a conflict in medical opinion between Dr. Chmell and Dr. Elmes with regard to whether appellant had disabling residuals of her accepted lumbar radiculopathy and the extent of any work restrictions related thereto. The statement of accepted facts accompanying the referral discussed the history of appellant's injury. It contained a discussion of appellant's medical history, both work related and other. The statement noted that appellant stopped work at the employing establishment on January 22, 2001 and returned to work in the private sector as a part-time substitute teacher beginning December 2007. It noted that the claim had been accepted for lumbar radiculopathy radiating in her right leg and discussed the duties of her employment as a letter carrier.

In an August 2, 2010 electrodiagnosis report received by OWCP on October 6, 2010, Dr. Jose L. Medina, a Board-certified neurologist, noted intermittent spontaneous potentials and excessive long duration polyphasic potentials in the radicular distribution of the right lumbar five root. He stated that these findings were consistent with moderate, active, ongoing right L5 radiculopathy. Dr. Medina noted, "This study shows no worsening."

In a November 4, 2010 report, Dr. Chmell opined that appellant continued to suffer from the effects of her March 1, 1998 work injury to her low back. He noted that he recently reevaluated her on November 4, 2010 and that she continued to experience low back pain which radiates down her leg. Dr. Chmell noted that appellant has had these complaints since her March 1, 1999 work injury. He stated that appellant's physical examination demonstrated muscle spasm and tenderness in the low back area, right side greater than left, with positive straight leg raising of the right leg, which has been a continued finding since her work injury. Dr. Chmell opined that this was entirely consistent with her accepted work-related diagnosis of lumbosacral neuritis. He stated that in essence appellant has an L4-5 disc herniation compressing the right L5 nerve root from her work injury and this continues to afford her problems that are confirmed by her objective findings on examination and especially by the EMG/NCV study. Dr. Chmell stated that these problem/conditions/symptoms are not related causally to anything other than her work activities.

In a November 22, 2010 report, Dr. Miller discussed appellant's medical history and conducted an examination. He stated that any connection between appellant's current condition and the accident in question assumed that there was an initial connection to the accident in question. Dr. Miller stated that appellant's entire medical course has been essentially laughable, as it was a classic case of one physician who was completely and unequivocally inconsistent with every other physician. He stated that Dr. Chmell took appellant's complaints and assumed a causal connection, exaggerated and inflated the physical findings and did not note any of the inconsistencies. Dr. Miller noted that the prior impartial medical examiners noted few abnormalities and consistently refuted Dr. Chmell's findings of atrophy, reflex changes and sensory losses. He stated that the EMGs which Dr. Chmell found as being abnormal were in fact nerve conduction velocities and essentially proved that there were no radicular problems.

Dr. Miller noted that appellant's examination was essentially normal, with no objective evidence to support her complaints. He opined that there was no impairment related to her alleged work injuries and found that appellant was capable of returning to full duty without any physical limitations. Dr. Miller stated that any impairment appellant had was due to her age-related degenerative changes.

On November 23, 2010 OWCP issued a notice of proposed termination of compensation and medical treatment.

In a December 22, 2010 report, Dr. Chmell stated that Dr. Miller misconstrued his medical reports. He contended that Dr. Miller ridiculed his findings based upon his claim that all of the other physicians did not support anything wrong and concluded that she did not have a back injury. Dr. Chmell noted that Dr. Miller ignored the second opinion physician Dr. Elmes who stated that appellant could have sustained an aggravation of an underlying condition of degenerative disc disease. He noted that appellant was not asymptomatic and that he never stated that she was totally disabled as Dr. Miller claimed.

OWCP asked Dr. Miller to respond to Dr. Chmell's concerns and to review additional evidence. In a response dated January 24, 2011, Dr. Miller reviewed the additional evidence and concluded that the completely contradicted Dr. Chmell's assertions. He noted that the most recent MRI scan completely repudiates Dr. Chmell's statement regarding the severity of appellant's current impairment. Dr. Miller noted that appellant was resistant to completing various necessary forms regarding her case.

On January 25, 2011 OWCP terminated appellant's medical and wage-loss benefits effective that date.

On January 31, 2011 appellant requested a telephonic hearing before an OWCP hearing representative. At the hearing held on June 7, 2011 she discussed her work limitations, the lack of vocational rehabilitation and her work history.

By decision dated August 26, 2011, the hearing representative affirmed the January 25, 2011 decision terminating appellant's compensation and medical benefits.

LEGAL PRECEDENT

Once OWCP has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.⁴ 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.⁵

⁴ C.R., Docket No. 11-1445 (issued January 26, 2012); *Bernadine P. Taylor*, 54 ECAB 342 (2003).

⁵ *Id.*

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

Section 8123(a) of FECA provides in pertinent part: If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.⁸ In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁹

ANALYSIS

OWCP accepted appellant's claim for lumbar radiculopathy. However, it terminated her medical and compensation benefits effective January 25, 2011 as it found that her accepted employment-related condition had resolved. The Board finds that OWCP properly terminated appellant's compensation and medical benefits.

Dr. Chmell, appellant's treating orthopedic surgeon, opined that appellant continued to suffer residuals from her accepted employment injury. Dr. Elmes, the second opinion physician, disagreed and concluded that appellant sustained a work-related aggravation of her radiculopathy, which ceased to be an aggravating factor when she stopped work at the employing establishment in 2001. In order to resolve this conflict, appellant was referred to Dr. Miller for an impartial medical examination. The Board finds that the special weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Miller, the impartial medical specialist selected to resolve the conflict in the medical opinion.¹⁰ Dr. Miller opined that any impairment appellant had at this time was solely due to her age-related degenerative changes. The Board has carefully reviewed the opinion of Dr. Miller and finds that it has reliability, probative value and convincing quality with respect to whether appellant continues to suffer residuals from her accepted condition. Dr. Miller based his opinion on a thorough review of appellant's medical and employment history and his physical examination. He noted that appellant's examination was essentially normal, there were no objective findings to support appellant's statements and that her neurological examination was completely negative. Dr. Miller concluded that there is absolutely no medical connection between her initially accepted medical conditions and her current status.

⁶ *Roger P. Payne*, 55 ECAB 535 (2004).

⁷ *Pamela K. Guesford*, 53 ECAB 726 (2002).

⁸ 5 U.S.C. § 8123(a).

⁹ *L.S.*, Docket No. 12-139 (issued June 6, 2012); *see also Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

¹⁰ *Id.*

With regard to appellant's contentions on appeal, appellant correctly noted that Dr. Miller did not consider the August 2, 2010 electrodiagnosis report. In the report, however, Dr. Medina noted that the study showed no worsening. Accordingly, any failure to consider this report is harmless. The Board finds that the statement of accepted facts adequately discussed appellant's medical and employment history and properly presented the case for the impartial medical examiner. As the issue before the Board is whether OWCP properly terminated benefits, the issue of vocational rehabilitation is not on appeal in this decision. Accordingly, OWCP properly terminated appellant's medical and compensation benefits.

CONCLUSION

The Board finds that OWCP properly terminated appellant's compensation and medical benefits effective January 25, 2011 on the grounds that her work-related injury ceased without residuals.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 26, 2011 is affirmed.

Issued: August 10, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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