

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

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Y.G., Appellant)	
)	
and)	Docket No. 11-1460
)	Issued: February 14, 2012
U.S. POSTAL SERVICE, POST OFFICE, Detroit, MI, Employer)	
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Appearances:
Steve Burt, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 7, 2011 appellant, through her representative, filed a timely appeal from an Office of Workers' Compensation Programs' (OWCP) merit decision dated December 13, 2010. 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 compensation benefits as of May 24, 2010.

FACTUAL HISTORY

On July 15, 2002 appellant, a 43-year-old letter carrier, experienced low back pain which caused her to lose her balance and slide down some steps. She filed a claim for benefits, which OWCP accepted for temporary aggravation of preexisting lumbar strain.² Appellant stopped

¹ 5 U.S.C. § 8101 *et seq.*

² OWCP initially handled the claim administratively and authorized payment of \$1,500.00 in medical expenses.

work on August 6, 2002 and was released to sedentary, light duty on September 4, 2002. On September 22, 2002 she was given restrictions of no lifting exceeding 10 pounds, intermittently. Appellant was able to perform sedentary work within her restrictions, although she missed work for intermittent periods.

In order to determine appellant's current condition and ascertain whether she still suffered residuals from her accepted conditions, OWCP referred her for a second-opinion examination with Dr. Norman L. Pollack, Board-certified in orthopedic surgery. In a May 5, 2009 report, Dr. Pollack reviewed her medical history and the statement of accepted facts and listed findings on examination. He stated that appellant had subjective, continued complaints of pain since July 15, 2002; however, he noted that there were no objective findings in his examination. Dr. Pollack advised that her medical records did not contain an explanation for her continued restricted work for nearly seven years. Based on his examination and the lack of objective findings, appellant no longer had residuals from her accepted, work-related lumbar sprain. Dr. Pollack concluded that she could return to her preinjury duties as a letter carrier without restrictions.

In a November 11, 2009 report, Dr. Shlomo Mandel, Board-certified in internal medicine, stated that he treated appellant for an L5-S1 disc herniation and spondylosis. He initially examined her on April 13, 2006, when she had complaints of low back pain which she attributed to her July 15, 2002 employment injury. Dr. Mandel stated that, during the June 4, 2009 examination, appellant had tenderness across the low back, with limited flexion and extension, no plantar dorsiflexion or weakness. He noted that she had tenderness with straight leg raising, bilaterally. During the most recent physical examination of September 24, 2009, appellant had tenderness across the low back with limited flexion and extension. Appellant reiterated that her ongoing symptoms were due to her July 15, 2002 work injury. Dr. Mandel opined that she had reached maximum medical improvement, with work restrictions of no lifting over 20 pounds, no excessive twisting, bending, climbing, standing, driving or lifting, as these activities aggravated her symptoms. He advised that appellant could return to full-time sedentary work provided her work restrictions were accommodated.

On November 23, 2009 OWCP issued a notice of proposed termination of compensation to appellant. It found that the weight of the medical evidence, as represented by Dr. Pollack's referral opinion, established that her accepted temporary aggravation of preexisting lumbar strain had ceased and that she had no work-related residuals stemming from this condition.

An updated statement of accepted facts dated December 3, 2009 noted that as of September 19, 2007 appellant began performing modified duties as a city letter carrier. Her job duties consisted of mail processing from one to four hours per day, casing mail for approximately 45 minutes per day, and miscellaneous employing establishment duties within her restrictions for two to four hours per day. The physical requirements of appellant's duties included sitting, simple grasping and fine manipulation from one to eight hours per day; walking up to one hour per day; driving up to two hours per day and reaching above shoulder level, not to exceed 20 pounds, up to 45 minutes per day. As of September 26, 2009, her assignment as a city letter carrier was changed; her new schedule entailed working from 8:00 a.m. to 9:30 a.m., five days per week, performing shuttle runs to pick up express mail. The physical requirements of

the new assignment consisted of standing up to 45 minutes, driving from one to two hours, with no prolonged walking, and intermittent lifting.³

On December 18, 2009 OWCP found a conflict in medical opinion between Dr. Mandel and Dr. Pollack as to whether appellant had residuals from her accepted temporary aggravation of preexisting lumbar strain condition. It referred her to Dr. Robert S. Levine, Board-certified in orthopedic surgery, for a referee medical examination.

In a January 30, 2010 report, Dr. Levine stated that appellant had a symptomatic lumbar spondylosis, an age-related degenerative process encompassing lumbar disc bulges, herniations, facet joint degeneration and vertebral bony overgrowths, or osteophytes. He opined that the problem was exacerbated by the fact that she was deconditioned and had very weak core strength. In addition, Dr. Levine advised that appellant was experiencing depression. He stated that she had no neurological abnormality identified. Dr. Levine opined that appellant's July 15, 2002 work injury temporarily aggravated the symptoms of her lumbar spondylosis; her current symptoms, however, were not related to the incident, but were related to deconditioning and possible nonorganic factors affecting her physical condition. Dr. Levine stated that the L5-S1 disc herniation and lumbar spondylosis diagnosed by Dr. Mandel were not directly caused, aggravated, accelerated or precipitated by the July 15, 2002 employment injury. He opined that, based on appellant's accepted condition, temporary aggravation of a preexisting lumbar sprain, she could return to full duties since she had recovered from the temporary aggravation. Dr. Levine stated that her symptomatic lumbar spondylosis was not work related, and as a result of this spondylosis she was not capable of performing her normal duties. He recommended that appellant undergo a program of spine rehabilitation with core strengthening, work hardening, and psychological pain management; based on the current program of care she was receiving, it was unlikely that she would be able to perform more than a sedentary job. Dr. Levine concluded that she had no residuals from the July 15, 2002 employment injury and that her symptoms and impairment were related to her underlying lumbar spondylosis.

By decision dated May 24, 2010, OWCP terminated appellant's compensation finding that Dr. Levine's impartial opinion represented the weight of the medical evidence.

On June 1, 2010 appellant, through her representative, requested an oral hearing, which was held on October 13, 2010. At the hearing, she stated that she worked full time until September 26, 2009 despite her work restrictions. On that date, appellant was called into a meeting and given a choice between taking a job offer within her restrictions for an hour and a half per day or not work at all. She worked under these terms, despite the fact that she would not work the remaining six and one-half hours of the workday.

By decision dated December 13, 2010, an OWCP hearing representative affirmed the May 24, 2010 termination decision.

³ Appellant was not placed on the periodic rolls and was not receiving continuing compensation from OWCP. Rather, she periodically filed Form CA-7 claims and would receive compensation for wage loss for periods where she was missing work.

LEGAL PRECEDENT

Once OWCP accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.⁴ Following a proper termination of compensation benefits, the burden of proof shifts back to claimant to establish continuing employment-related disability.⁵

Section 8123(a) of FECA provides that, if there is a 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.⁶ It is well established that, when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.⁷

ANALYSIS

OWCP determined that a conflict arose in medical opinion between Dr. Mandel, appellant's treating physician, and Dr. Pollack, a second-opinion physician, as to whether she had residuals of the accepted July 15, 2002 injury. OWCP referred appellant to Dr. Levine for an impartial medical evaluation.

In a January 30, 2010 report, Dr. Levine found that appellant's temporary aggravation of preexisting lumbar strain had ceased and that she no longer had any residuals from this condition. He advised that appellant's July 15, 2002 work injury temporarily aggravated the symptoms of her lumbar spondylosis but that her current symptoms were not related to the incident. Dr. Levine found that she had no current neurological abnormality. He stated that her current problem was exacerbated by the fact that she had become depressed, that she was deconditioned and had very weak core strength. Dr. Levine opined that the L5-S1 disc herniation and lumbar spondylosis diagnosed by Dr. Mandel were not directly caused, aggravated, accelerated, or precipitated by the July 15, 2002 employment injury. He advised that, based on her accepted condition, temporary aggravation of a preexisting lumbar sprain, she could return to full duties since she had recovered from the temporary aggravation. OWCP relied on Dr. Levine's opinion in its May 24, 2010 decision, finding that appellant had no continuing disability or impairment causally related to the July 15, 2002 employment injury.

The Board finds that Dr. Levine's impartial opinion supports that her accepted temporary aggravation of lumbar strain ceased and negated the causal relationship between appellant's current condition and her accepted employment injury. The medical evidence establishes that appellant no longer has any residuals from her accepted July 15, 2002 temporary aggravation of preexisting lumbar strain injury. Dr. Levine found no indication in the record that appellant's current lumbar spondylosis condition was caused by anything other than the normal aging

⁴ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

⁵ *John F. Glynn*, 53 ECAB 562 (2002).

⁶ *Regina T. Pellecchia*, 53 ECAB 155 (2001).

⁷ *Jacqueline Brasch (Ronald Brasch)*, 52 ECAB 252 (2001).

process. His opinion is sufficiently probative, rationalized and based upon a proper factual background. Therefore, OWCP properly accorded Dr. Levine's opinion the special weight of an impartial medical examiner.⁸ The Board therefore finds that Dr. Levine's opinion constituted the weight of medical opinion and supports OWCP's May 24, 2010 decision to terminate compensation based on the July 15, 2002 work injury.

The Board will affirm OWCP's hearing representative's December 13, 2010 decision, finding that appellant's compensation benefits were properly terminated on May 24, 2010.

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 compensation benefits.

ORDER

IT IS HEREBY ORDERED THAT the December 13, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 14, 2012
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

⁸ Gary R. Seiber, 46 ECAB 215 (1994).