

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

S.S., Appellant

and

**DEPARTMENT OF COMMERCE, REGIONAL
CENSUS CENTER, Seattle, WA, Employer**

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**Docket No. 11-1536
Issued: February 27, 2012**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 17, 2011 appellant filed a timely appeal from the May 16, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP), which affirmed the termination of her compensation. 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 properly terminated disability compensation effective January 24, 2010 and medical benefits effective February 1, 2011.

FACTUAL HISTORY

On April 20, 2009 appellant, then a 54-year-old census enumerator, sustained an injury in the performance of duty when she tripped over a raised walkway. OWCP accepted her claim for enthesopathy of the left hip region, neck sprain and unspecified sprains of the right knee and leg. Appellant received disability compensation through January 23, 2010.

¹ 5 U.S.C. § 8101 *et seq.*

On July 12, 2009 Dr. Haritha Vankireddy, the attending Board-certified family physician specializing in geriatric medicine, released appellant to return to work with no restrictions. She also released appellant from periodic medical care to return as needed. On July 16, 2009 however, Dr. Vankireddy imposed physical restrictions. Dr. Robert B. Handel, a Board-certified psychiatrist, took over appellant's treatment, also imposed restrictions. Dr. Ruth M Baer, a consulting osteopath specializing in occupational medicine, imposed restrictions as well.

In June 2010, OWCP's hearing representative noted a discrepancy in the medical evidence. Dr. Vankireddy found that appellant's cervical condition had resolved and that her knee condition was 90 percent better. All physicians reported improvement. Dr. Handel described appellant's pain as zero to one in September 2009, indicated that her neck was dramatically better and on December 30, 2009 described her improvement as a "miracle." Yet, both he and Dr. Baer continued to support the need for work limitations. The hearing representative remanded the case for a second-opinion evaluation.

OWCP referred appellant, together with her medical record and a statement of accepted facts, to Dr. Timothy P. Daly, a Board-certified orthopedic surgeon, for an evaluation of whether the accepted conditions had resolved. On September 30, 2010 Dr. Daly related her history and symptoms. He reviewed appellant's medical record, including the reports of Dr. Vankireddy and Dr. Handel. Dr. Daly described his findings on physical examination.

Responding to questions posed by OWCP, Dr. Daly indicated that the accepted medical conditions had resolved by the time Dr. Vankireddy released appellant to full duty without restrictions on July 12, 2009. This was confirmed by the lack of objective findings on examination. Dr. Daly recommended no additional treatment. He stated that restrictions later imposed on appellant seemed excessive, as there were no objective findings to support the need for limitations. After reviewing the physical requirements of her position as an enumerator, Dr. Daly recommended no physical restrictions. He noted that appellant continued to run her own business and had taken temporary part-time work, limiting her hours and duties to a library assistant. In Dr. Daly opinion, appellant was capable of gainful employment without restrictions based on the current absence of objective findings.

On October 7, 2010 Dr. Handel imposed continuing restrictions.

In a decision dated November 12, 2010, OWCP terminated appellant's disability compensation effective January 24, 2010. It gave weight of the medical evidence to Dr. Daly's opinion and noted that the restrictions imposed by Dr. Handel and Dr. Baer were within appellant's regular duties as an enumerator. Based on Dr. Daly's opinion, OWCP expanded its acceptance of appellant's claim to include contusion/strain of the left knee.

OWCP proposed to terminate all benefits for the accepted conditions. It noted that appellant's recent chart showed limited physical examinations for several months and a lack of focus on objective findings. OWCP found that Dr. Daly's opinion represented the weight of the medical evidence and established that the conditions of left hip enthesopathy, bilateral knee strain and neck strain had resolved.

In a decision dated February 1, 2011, OWCP terminated all benefits for the accepted medical conditions. It noted that medical evidence recently submitted showed subjective complaints only.

On May 16, 2011 OWCP's hearing representative affirmed the November 12, 2010 and February 1, 2011 decisions. The hearing representative found that Dr. Daly's opinion represented the weight of the medical evidence. Dr. Daly discussed appellant's condition in some detail and explained that there was no evidence of any residual of the work injury. Although Dr. Handel continued to assert that she required restrictions, he provided no rationale to support the opinion that she remained symptomatic and disabled by her work injury.

On appeal, appellant explained that she is seeking wage-loss compensation from January 24, 2010 through January 22, 2011, for which she continued to submit biweekly claims. OWCP's termination, she notes, was effective February 1, 2011. Appellant expresses concern that OWCP appeared to show bias in favor of Dr. Daly and apparently dismissed without regards the opinions of the doctors who followed her throughout. She states that there continues to be no day since the fall that she has not experienced pain in her knees, hip or neck. Appellant notes that she did not complain about knee or hip problems until the injury. She adds that her physicians suggested that the trauma could have activated a previously unknown arthritic condition. Appellant states: "I am owed nearly 12 months of back pay."

LEGAL PRECEDENT

The United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.² Once OWCP accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.³ After it has determined that an employee has disability causally related to federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.⁴ Having accepted a claim and initiated payments, OWCP may not terminate compensation without a positive demonstration by the weight of evidence that entitlement to benefits has ceased.⁵

ANALYSIS

OWCP accepted that appellant sustained enthesopathy of the left hip region, neck sprain and unspecified sprains of the right knee and leg as a result of her April 20, 2009 employment injury. It terminated wage-loss compensation effective January 24, 2010 and medical benefits effective February 1, 2011. OWCP therefore has the burden to justify the termination of benefits for the accepted medical conditions.

OWCP did not accept appellant's claim for right patella chondral fracture or arthritis or any other medical condition. It did not pay compensation on the basis of those medical conditions, and it carries no burden of proof with respect to those medical conditions. To justify its termination of compensation, OWCP must show by the weight of the medical evidence that

² *Id.* at § 8102(a).

³ *Harold S. McGough*, 36 ECAB 332 (1984).

⁴ *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Periodic Review of Disability Cases*, Chapter 2.812.3 (March 2010).

disability caused by enthesopathy of the left hip region, neck sprain and unspecified sprains of the right knee and leg ceased by January 24, 2010 and that residuals of those specific conditions ceased by February 1, 2011.

As an OWCP hearing representative noted in June 2010, there seemed to be a discrepancy in the medical evidence. Appellant's doctors had reported that her conditions had either resolved or were 90 percent better or were dramatically better, that her improvement was a "miracle." Yet, they still imposed work limitations. It was for that reason a second opinion evaluation was sought.

Dr. Daly, a Board-certified orthopedic surgeon, reviewed appellant's medical record and a statement of accepted facts. He based his opinion on an accurate medical and factual history. Dr. Daly reviewed the reports of Dr. Vankireddy, Dr. Handel and Dr. Baer, and concluded that the accepted strains had resolved. He supported his opinion with sound medical rationale. Dr. Daly relied primarily on the lack of any objective findings, in the examinations conducted by appellant's physicians or in his own. He noted that Dr. Vankireddy had released appellant to full duty without restrictions on July 12, 2009, and that later restrictions seemed excessive given the lack of objective findings. Further, Dr. Daly reviewed the physical requirements of appellant's date-of-injury position.

The Board finds that Dr. Daly's opinion directly addressed the issues to be resolved and is sufficiently rationalized that it constitutes the weight of the medical opinion evidence. There is no true conflict in the medical evidence. Although Dr. Handel, the attending physiatrist, continued to impose restrictions, he did not review Dr. Daly's report or attempt to rebut his findings or opinion. He did not explain how the restrictions he imposed after January 24, 2010 were inconsistent with the physical requirements of appellant's date-of-injury position or what objective findings showed that residuals of the accepted sprains continued beyond February 1, 2011. As the weight of the medical opinion evidence establishes that disability and residuals of the accepted strains had ceased, the Board finds that OWCP has met its burden to justify the termination of compensation benefits for the accepted medical conditions. The Board will affirm OWCP's May 16, 2011 decision.

Appellant seeks wage-loss compensation from January 24, 2010 through January 22, 2011. She bears the burden of proof to establish that any disability after January 23, 2010 is causally related to the April 20, 2009 work incident.⁶ OWCP did not show bias toward Dr. Daly, nor did it dismiss without regard the physicians who had treated her. It gave due regard to their reports and found that the weight of the medical evidence rested with Dr. Daly, who provided a sound opinion based on a review of all the medical evidence and his findings on examination.

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.

⁶ *Maurice E. King*, 6 ECAB 35 (1953); *Wentworth M. Murray*, 7 ECAB 570 (1955) (after a termination of compensation payments, warranted on the basis of the medical evidence, the burden shifts to the claimant to show by the weight of the reliable, probative and substantial evidence that, for the period for which he claims compensation, he had a disability causally related to the employment resulting in a loss of wage-earning capacity).

CONCLUSION

The Board finds that OWCP has met its burden to justify the termination of disability compensation effective January 24, 2010 and the termination of medical benefits effective February 1, 2011.

ORDER

IT IS HEREBY ORDERED THAT the May 16, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 27, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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