

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

V.C., Appellant)

and)

U.S. POSTAL SERVICE, NORTHERN)
ILLINOIS PERFORMANCE CLUSTER,)
Carol Stream, IL, Employer)

**Docket No. 11-1561
Issued: February 15, 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
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On June 21, 2011 appellant filed a timely appeal from the March 25, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) terminating 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 met its burden of proof to terminate appellant's wage-loss compensation and medical benefits on the grounds that she ceased to have residuals of her work injuries.

¹ 20 C.F.R. § 8101 *et seq.*

FACTUAL HISTORY

OWCP accepted that on March 11, 2001 appellant, then a 46-year-old general expeditor, sustained a right wrist sprain, right hip contusion, cervical and lumbosacral strains and contusions, cervical spondylosis and bulging discs at C3 through C7 due to a fall on ice at work. Her claim was later expanded to include acceptance of a right knee medial meniscal tear with arthroscopic repair surgery on December 5, 2003.² Appellant stopped work on March 11, 2001 and was paid appropriate compensation. She returned to part-time work in April 2001 and stopped work completely on May 11, 2001. Appellant returned to limited-duty full-time work in November 2001 before stopping all work on May 7, 2002. She was paid disability compensation beginning May 7, 2002 and was placed on the periodic rolls effective August 10, 2003.

On September 28, 2005 appellant underwent a second opinion examination with Dr. Leonard Smith, a Board-certified orthopedic surgeon, who provided an October 26, 2005 report and a February 16, 2006 addendum report. Dr. Smith opined that her November 2, 1998 and March 11, 2001 work injuries had resolved and that any need for continued physical restrictions was due to nonoccupational conditions.

On April 20, 2006 OWCP issued a notice of proposed termination of wage-loss compensation and medical benefits on the basis that the weight of the medical evidence demonstrated that appellant was no longer disabled on account of the accepted work injuries. It found that the medical opinion of Dr. Smith held greater weight than the opinion of her Board-certified internist, Dr. Karim Yunez, who found appellant totally disabled from all employment.

On August 9, 2006 OWCP issued a final decision terminating all benefits effective that date on the basis that appellant had no continuing work-related residuals or disability. After a hearing and the submission of new medical evidence, an OWCP hearing representative issued a January 25, 2007 decision that affirmed OWCP's August 9, 2006 decision but found that the submission of new medical evidence from Dr. Jacob Salomon, an attending Board-certified general surgeon, created a conflict in medical opinion with the second opinion examiner.³ The hearing representative directed OWCP to obtain an impartial medical examination in order to resolve the conflict in medical opinion over whether appellant had a continuing work-related condition that was disabling her from work.

On remand, OWCP referred appellant for an impartial medical examination with Dr. Keith Rezin, a Board-certified orthopedic surgeon, who provided reports dated June 27 and October 10, 2007. Based on Dr. Rezin's opinion that her accepted conditions were no longer

² Appellant had previously sustained a left elbow injury on November 2, 1998 when she was struck by a mail cart. This claim was approved for a left elbow contusion and left elbow neuritis and it has been administratively combined with the present case.

³ In a January 9, 2007 report, Dr. Salomon noted findings of traumatic arthritis in the right knee, positive Tinel's sign and tenderness at the left ulnar nerve and active disc bulges in the cervical spine. He stated that the accepted contusion conditions had resolved, but opined that the work-related conditions of the right knee and cervical spine were still active.

active and disabling her from work, OWCP issued a January 28, 2008 decision terminating all ongoing benefits.

Following an oral hearing, an OWCP hearing representative issued an October 6, 2008 decision reversing the termination decision of January 28, 2008 on the grounds that Dr. Rezin's opinion could not be afforded special weight because it was not supported by sufficient medical rationale. OWCP was directed to obtain a new impartial medical examination to resolve the previously established conflict in medical opinion evidence and to determine whether appellant had any continuing residuals due to her prior work injuries.

On remand, OWCP referred appellant to Dr. David H. Trotter, a Board-certified orthopedic surgeon, for an impartial medical examination and opinion regarding whether she had continuing work-related residuals.

In a December 4, 2008 report, Dr. Trotter opined that appellant no longer had residuals of her November 2, 1998 and March 11, 2001 work injuries. He indicated that his physical examination, prior medical tests and her mechanism of injury supported a finding that she no longer had any continuing residuals or functionality deficit or disability attributable to either the November 2, 1998 or March 11, 2001 work injury. Dr. Trotter also indicated that appellant appeared to have been fully diagnosed and treated to complete resolution by the combination of extensive medical and surgical intervention and therapy rendered on her behalf. He stated that "there is no evidence of any residual or recurrent abnormalities attributable to the work injuries noted above" and noted:

"[Appellant's] current condition appeared to be exclusively attributable to preexisting and ongoing degenerative abnormalities of the spine and extremity joints and/or attributable to the conditions that predated both the workplace injuries. These conditions do not appear to have been caused or chronically aggravated whatsoever by the injuries sustained in March 2001 or November 1998. Those injuries from March 2001 and November 1998 appeared to have resolved in their entirety.... [Appellant] has no evidence that the bulging disc at C3-7 was at all related to the injury dates. This individual's current conditions relate to preexistent or ongoing conditions and/or relate to plausible and reported intervening injuries or conditions subsequent to the date of injury."

By decision dated January 30, 2009, OWCP terminated appellant's ongoing compensation benefits on the basis that the weight of the medical evidence as represented by the opinion of Dr. Trotter, the impartial medical specialist, demonstrated that she did not have any continuing residuals from her work injuries.

Appellant requested a hearing before an OWCP hearing representative. In a September 17, 2009 decision, the hearing representative set aside OWCP's January 30, 2009 decision. He found that the opinion of Dr. Trotter was not sufficiently rationalized to constitute the weight of the medical evidence with respect to the issue of her continuing work-related residuals. The hearing representative remanded the case to OWCP for further development. He directed OWCP to obtain copies of appellant's magnetic resonance imaging (MRI) scan reports and imaging films from her initial testing in 2001 or 2002 and from 2007 (for both the knees and

cervical spine) and to refer them to Dr. Trotter with a request that the impartial specialist submit a supplemental report in which he provides additional explanation and rationale for why he believed her current cervical disc condition was not causally related to the March 11, 2001 work accident. Dr. Trotter was also directed to explain why he felt that her March 11, 2001 accident did not aggravate what he felt was a preexisting degenerative bulging disc condition. The hearing representative indicated that, in offering his opinion, Dr. Trotter should discuss whether the mechanism of the March 11, 2001 work accident was sufficient or capable of directly causing or aggravating a preexisting cervical condition and to also discuss the normal progression of appellant's preexisting cervical disease and whether her MRI scans over time revealed a worsening of such a condition. With regard to her knee conditions, Dr. Trotter should review her 2007 MRI scan results and explain whether she had a tear present at the same location as the prior meniscus tear for which surgery was performed in December 2003. The hearing representative indicated that Dr. Trotter should also be requested to discuss the significance of the degenerative conditions found at the time of her initial MRI scan of the right knee in relation to her current knee problems. Dr. Trotter should discuss the probability or likelihood that appellant developed left knee problems due to overcompensating for the prior right knee injury.

On remand, OWCP followed an OWCP hearing representative's directives, including requesting that Dr. Trotter prepare a supplemental report.⁴

In a December 29, 2009 report, Dr. Trotter noted that the x-rays and MRI scan testing since 2001 showed what appeared to be exclusively degenerative changes of the spine. He stated that the bulging discs noted on MRI scan testing were compatible with the preexistent and nonmaterially affected degenerative changes that did not at all correlate with the mechanism of the March 11, 2001 work injury. Dr. Trotter indicated that the March 11, 2001 work injury mechanism did not aggravate what was likely a completely preexisting degenerative multilevel bulging condition at the cervical disc. He stated that "had the original injury been sufficient to have caused or even significantly aggravated what, in this evaluator's opinion, was a completely preexisting bulging natural wear and tear degenerative condition of the cervical spine at the level of the disc, then there would have been a much more dramatic initial presentation of severity of pain, essentially compatible with a severe cervical spine injury."

Dr. Trotter stated that the normal progression of wear and tear at the level of the cervical spine was the exclusive cause of the radiographic findings on the original MRI scan of the cervical spine dated April 24, 2001. He stated that the normal progression of the exclusively preexistent cervical disease appeared to have been the exclusive cause of the abnormalities of multilevel degenerative disc disease noted on the April 30, 2007 MRI scan of the cervical spine. Appellant's MRI scans at that time reveal a minimal, but definite worsening of what appeared to be a natural history of normal wear and tear of the cervical spine. Dr. Trotter stated that there was no documentation or evidence that the current symptoms or examination findings were causally related to the ongoing radiographic abnormalities of the multilevel cervical disc abnormalities. Appellant's subjective findings were markedly disproportionate to the objective findings at the level of the cervical spine, which were minimal and, in any event, incompatible with any symptomatic pain from the disc themselves.

⁴ OWCP ensured that Dr. Trotter had access to the relevant medical documents.

Regarding appellant's knee condition, Dr. Trotter stated that, on reviewing the relevant MRI scan findings, it appeared that the abnormalities at the level of the menisci were exclusively attributable, especially at the level of the right knee, to the prior surgical intervention at the site of meniscal debridement. Other findings that he observed, such as articular cartilage abnormalities in the patellofemoral compartment and degenerative changes in the medial compartment, were not located at the sites of the original work injuries. Dr. Trotter stated, "Clearly, the only findings at the site of the original injury were at the medial meniscus and that was an old finding that there was no evidence of repairs in that areas. The only additional findings in the more recent MRI [scan testing] were those of articular cartilage abnormalities distant from the original injury and unrelated to that original injury, *i.e.*, a separate compartment.

Dr. Trotter indicated that he also reviewed the MRI scan of the contralateral left knee and noted only minimal wear and tear degeneration of the medial meniscus and other aspects of the medial compartment and the patellofemoral compartment compatible with wear and tear degeneration. None of the findings appeared to have represented any type of findings that would be at all unexpected and there was no evidence that appellant had any ongoing compensatory stress placed on the left knee due to the injury to the right knee. Dr. Trotter indicated that appellant had full diagnostic treatment with regard to the right knee and there was no evidence of any residual or recurrent tear at the site of the prior injury or at any other location that was causally related to the original work injury. He stated:

"[Appellant] has been noted to have, in this evaluator's opinion, exclusively degenerative changes of her left knee occurring in the areas that would have been expected based on the natural history of 95 percent of all knees to have degenerative changes in those specific areas. There is no evidence of any type of surgeries that [she] has undergone or any injury to her right knee at all that has at all caused directly or indirectly a tendency towards overloading or overuse of the left knee at all."

In a January 14, 2010 decision, OWCP terminated appellant's wage-loss compensation and medical benefits on the grounds that she ceased to have residuals of her work injuries. It based its termination on the opinion of Dr. Trotter.

Appellant submitted numerous medical reports that had previously been submitted and considered. She also submitted several new medical reports which discussed her current medical condition.

In a March 25, 2011 decision, OWCP affirmed its January 14, 2010 termination decision.

LEGAL PRECEDENT

Under FECA, once OWCP has accepted a claim it has the burden of justifying termination or modification of compensation benefits.⁵ It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁶

⁵ *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

⁶ *Id.*

OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.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 that on March 11, 2001 appellant sustained a right wrist sprain, right hip contusion, cervical and lumbosacral strains and contusions, cervical spondylosis and bulging discs at C3 through C7 due to a fall on ice at work. Appellant's claim was later expanded to include acceptance of a right knee medial meniscal tear with arthroscopic repair surgery on December 5, 2003.¹⁰ In a January 14, 2010 decision, OWCP terminated her entitlement to wage-loss compensation and medical benefits based on a December 29, 2009 report of Dr. Trotter, a Board-certified orthopedic surgeon serving as an impartial medical specialist.

OWCP properly determined that there was a conflict in the medical opinion between Dr. Smith, a Board-certified orthopedic surgeon serving as an OWCP referral physician, and Dr. Salomon, an attending Board-certified general surgeon, on the issue of whether appellant continued to have residuals of her employment injuries.¹¹ In order to resolve the conflict, it properly referred her, pursuant to section 8123(a) of FECA, to Dr. Trotter for an impartial medical examination and an opinion on the matter.¹²

The Board finds that OWCP improperly found that the weight of the medical evidence was represented by the December 29, 2009 report of Dr. Trotter, the impartial medical specialist

⁷ See *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁸ 5 U.S.C. § 8123(a).

⁹ *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

¹⁰ Appellant had previously sustained a left elbow injury on November 2, 1998 when she was struck by a mail cart. This claim was approved for a left elbow contusion and left elbow neuritis and it has been administratively combined with the present case.

¹¹ Dr. Smith provided an October 26, 2005 report and a February 16, 2006 addendum report. He opined that appellant's November 2, 1998 and March 11, 2001 work injuries had resolved and that any need for continued physical restrictions was due to nonoccupational conditions. In contrast, Dr. Salomon indicated on January 9, 2007 that the work-related conditions of the right knee and cervical spine were still active.

¹² See *supra* note 8 and accompanying text. OWCP had previously terminated appellant's compensation based on a December 4, 2008 report of Dr. Trotter. It later reversed this termination because it found that Dr. Trotter's report did not contain adequate medical rationale. In accordance with OWCP's reversal, appellant was again referred to Dr. Trotter for further clarification of his opinion.

selected to resolve the conflict in the medical opinion.¹³ The report of Dr. Trotter is not sufficiently well rationalized to establish that appellant ceased to have residuals of her employment injuries.

In his December 29, 2009 report, Dr. Trotter noted that the x-rays and MRI scan testing since 2001 showed what appeared to be exclusively degenerative changes of the spine. He stated that the bulging discs noted on MRI scan testing were compatible with the preexistent and nonmaterially affected degenerative changes that did not at all correlate with the mechanism of the March 11, 2001 work injury. Dr. Trotter indicated that the March 11, 2001 work injury mechanism did not aggravate what was likely a completely preexisting degenerative multilevel bulging condition at the cervical disc. He stated that, had the March 11, 2001 injury been sufficient to cause the bulging cervical disc condition or even significantly aggravated a preexisting bulging disc condition, appellant would have been a much more dramatic initial presentation of severity of pain.

The Board finds that Dr. Trotter's opinion is not based on a complete and accurate factual and medical history and therefore it is of limited probative value regarding the question of whether appellant continued to have work-related residuals, particularly residuals of her March 11, 2001 work injury. It was accepted that appellant sustained bulging discs at C3 through C7 due to a fall on ice at work on March 11, 2001, but Dr. Trotter has categorically denied that she sustained such an injury either through direct causation or aggravation of a preexisting condition. Although Dr. Trotter discussed the relevant diagnostic testing, he did not adequately explain the basis for his opinion. He suggested that appellant no longer had residuals of her right wrist, right hip, lumbosacral, left elbow and right knee conditions, but he focused his discussion on her right knee (along with the possibility of a consequential light knee injury) and did not provide any notable discussion of the other areas affected by the work injuries. In addition, Dr. Trotter did not provide any clear opinion on her ability to work or need for work restrictions, either due to a work-related or nonwork-related cause.

For these reasons, Dr. Trotter's December 29, 2009 report is of limited probative value on the relevant issue of this case and OWCP improperly relied upon it to terminate appellant's compensation.

CONCLUSION

The Board finds that OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits on the grounds that she ceased to have residuals of her work injuries.

¹³ See *supra* note 9 and accompanying text.

ORDER

IT IS HEREBY ORDERED THAT the March 25, 2011 decision of the Office of Workers' Compensation Programs is reversed.

Issued: February 15, 2012
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board