

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

S.P., Appellant)

and)

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, Fort Smith, AR, Employer**)

**Docket No. 11-1323
Issued: January 24, 2012**

Appearances:
Alan J. Shapiro, Esq., 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 10, 2011 appellant, through her attorney, filed a timely appeal of an April 7, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) terminating compensation benefits. Pursuant to the Federal Employees' Compensation Act¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUE

The issue is whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective September 27, 2010.

FACTUAL HISTORY

On August 11, 2009 appellant, then a 51-year-old nurse, filed a traumatic injury claim, Form CA-1, alleging that on August 3, 2009 she slipped on a wet surface turning her left foot

¹ 5 U.S.C. § 8101 *et seq.*

sideways and landing on her left knee, falling to the right side and landing on her right forearm. She stated that she sustained pain in the bottom of her left foot and ankle, left knee and hip and experienced stabbing pain under her left scapula and mid back. In a note dated August 3, 2009, the employing establishment stated that appellant had chronic lumbar and thoracic pain. Appellant reported left knee, ankle, foot and back pain as a result of her fall.

By letter dated September 2, 2009, OWCP accepted appellant's claim for left ankle sprain, left knee abrasion and thoracic strain. On October 7, 2009 it expanded acceptance of her claim for the additional conditions of foot strain or plantar fascial strain on the left, left knee strain and lumbar strain.

On September 9, 2009 Dr. Terry Hoyt, an osteopath, found that appellant was totally disabled. In a note dated January 5, 2010, Dr. Michael S. Wolfe, a Board-certified orthopedic surgeon, opined that her soft tissue discomfort was self-limiting. He indicated that appellant could return to work on January 11, 2010 with no lifting of more than 25 pounds, no repetitive bending, stooping or lifting and no sitting for more than two hours for two weeks. Dr. Wolfe stated that she could eventually return to full duty without restrictions. On February 3, 2010 Dr. Anthony Copocelli indicated that appellant required no further treatment. He provided work restrictions of lifting less than 20 pounds, changing positions frequently and no bending or repetitive twisting on February 8, 2010. Dr. Copocelli indicated that appellant could return to work on March 22, 2010 with the same restrictions.

Dr. Hoyt completed a report on April 1, 2010 and opined that in addition to appellant's accepted conditions she suffered from cervical and lumbar radiculopathy, urinary incontinence, headaches and psychological issues. He stated that she had preexisting hypertension, bipolar affective disorder, adult attention deficient disorder, fibromyalgia and generalized anxiety disorder, but was functional in her job. Dr. Hoyt stated when he examined appellant on March 23, 2010 she was an "emotional wreck" and that her blood pressure was uncontrolled and she showed signs of encephalopathy. He also noted that her pain had escalated and she was very anxious about her future. Dr. Hoyt recommended further neurologic and psychiatric treatment and stated that appellant was totally disabled. He opined that the disability was due to her severe and multiple medical problems.

OWCP referred appellant for a second opinion evaluation with Dr. Alice M. Martinson, a Board-certified orthopedic surgeon. In a report dated August 9, 2010, Dr. Martinson described appellant's employment injury and her continued symptoms of left anterior knee pain, persistent low back pain, radiating left leg pain and left ankle weakness. She noted that appellant had a preexisting condition of obsessive-compulsive disorder, fibromyalgia since 1993 and worsening depression. Appellant also reported bladder urgency. Dr. Martinson performed a physical examination and reviewed diagnostic studies. She diagnosed lumbar sprain without evidence of radiculopathy, thoracolumbar strain without evidence of radiculopathy, left knee and ankle sprains, fibromyalgia and obsessive-compulsive disorder marked by agitation and anxiety. Dr. Martinson stated that appellant had very little or no objective findings shortly after her work injury. She stated that there is no clinical or imaging evidence of significant pathology in the left knee or left ankle. Dr. Martinson stated that appellant's psychiatric condition was her primary limiting diagnosis. In response to specific questions from OWCP, she stated that appellant had no perspective evidence of diagnosis that could be considered a residual of her August 3, 2009

employment injury with no clinical or diagnostic findings that the accepted condition was still active. Dr. Martinson stated that appellant was physically capable of returning to her date-of-injury position, but that her psychiatric condition needed to be clarified. She stated that from an orthopedic standpoint appellant had no physical limitations. Dr. Martinson completed a work capacity evaluation and stated that from an orthopedic perspective appellant could return to work with no restrictions. However, she noted that appellant exhibited severe psychological abnormalities and that these conditions were likely disabling.

On August 24, 2010 OWCP proposed to terminate appellant's compensation benefits. It stated that she resigned from the employing establishment on February 6, 2010 and that she had no attending physician providing medical evidence supporting her claims for employment-related disability for work. OWCP found that Dr. Martinson's report established that appellant was no longer disabled and had no medical residuals of her accepted conditions.

By decision dated September 27, 2010, OWCP terminated appellant's compensation and medical benefits effective that date.

Counsel requested an oral hearing on October 5, 2010 before an OWCP hearing representative. Appellant testified at the oral hearing on January 19, 2011. She listed her conditions as left ankle injury, tendinitis, back injury and bladder incontinence and chronic pain resulting in high blood pressure. Appellant stated that she had preexisting conditions including degenerative arthritis and fibromyalgia as well as bipolar disorder for which she took medication.

By decision dated April 7, 2011, the hearing representative affirmed OWCP's September 27, 2010 decision finding that Dr. Martinson's opinion was entitled to the weight of the medical evidence in establishing that appellant had no employment-related residuals as the employment injury had resolved.

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.² After it has determined that an employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.³ Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁴ 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.⁵

² *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

³ *Id.*

⁴ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁵ *Id.*

ANALYSIS

OWCP accepted that appellant sustained left ankle sprain, left knee abrasion and thoracic strain as well as foot strain or plantar fascial strain on the left, left knee strain and lumbar strain as the result of her August 3, 2009 employment injury. It has not accepted any additional alleged conditions.⁶ Appellant did not return to work and continued to claim that she was totally disabled as a result of her August 3, 2009 employment injury.

OWCP terminated appellant's compensation benefits based on the August 9, 2010 report from Dr. Martinson, a second opinion physician, who provided a history of injury and medical treatment. Dr. Martinson provided her findings on physical examination and lumbar sprain, thoracolumbar strain, left knee and ankle sprains, fibromyalgia and obsessive compulsive disorder marked by agitation and anxiety. She concluded that appellant had no objective findings of continued work-related condition, as the employment injury had ceased and that was no clinical or imaging evidence of left lower extremity injury. Dr. Martinson opined that appellant had no residuals of her August 3, 2009 employment and that appellant was capable of returning to her date-of-injury position. She noted that appellant exhibited severe psychological abnormalities and that these conditions were likely disabling.

The Board finds that this report is sufficiently detailed and well-reasoned to constitute the weight of the medical opinion evidence. Dr. Martinson reviewed appellant's factual and medical history and provided findings on physical examination. She responded to specific questions from OWCP and opined that appellant's employment-related conditions had ceased with no residuals. Based on these findings, Dr. Martinson concluded that in regard to appellant's employment-related injuries were concerned she could return to her date-of-injury position.

In support of her claim, appellant submitted a note dated January 5, 2010 from Dr. Wolfe finding that she could return to work on January 11, 2010 with restrictions for two weeks and then return to full duty. This note does not support her continuing disability or medical residuals.

Dr. Copocelli found on February 3, 2010 that appellant required no further treatment. However, he provided work restrictions of lifting less than 20 pounds, changing positions frequently and no bending or repetitive twisting on February 8, 2010. While Dr. Copocelli agreed that appellant had no medical residuals, he did provide work restrictions. However, given the array of conditions alleged by appellant, his report is not entitled to great weight as he did not specifically attribute appellant's disability to her accepted conditions. This report is therefore not sufficiently detailed and well reasoned to create a conflict with Dr. Martinson's findings.

Dr. Hoyt completed a report on April 1, 2010 and noted appellant's accepted conditions as well as cervical and lumbar radiculopathy, urinary incontinence, headaches and psychological factors. He stated that she had preexisting hypertension, bipolar affective disorder, adult attention deficient disorder, fibromyalgia and generalized anxiety disorder, but was functional in

⁶ By decision dated December 23, 2011, in Docket No. 11-703, the Board affirmed OWCP's December 14, 2010 decision, finding that appellant had not met her burden of proof in establishing that she sustained the conditions of arthritis, fibromyalgia, incontinence, high blood pressure and headaches as a result of her accepted employment injury on August 3, 2009. Docket No. 11-703 (issued December 23, 2011).

her job. Dr. Hoyt stated that appellant was totally disabled due to her severe and multiple medical problems. This report supports appellant's claims for medical residuals and disability. However, as with Dr. Copocelli's report, Dr. Hoyt did not specifically attribute either her disability or medical residuals to the conditions accepted by OWCP. He did not explain how or why he believed that the accepted conditions continued to require medical treatment or how these conditions rendered appellant totally disabled. Without the necessary specificity and medical reasoning, this report is not sufficient to create a conflict with Dr. Martinson's report or to require additional development on the part of OWCP.

The Board finds that the weight of the medical evidence is represented by the findings and conclusions espoused by Dr. Martinson and that OWCP met its burden of proof to terminate appellant's compensation and medical benefits as the evidence establishes no continuing employment-related disability or medical residuals.

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 and medical benefits effective September 27, 2010.

ORDER

IT IS HEREBY ORDERED THAT the April 7, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 24, 2012
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board