

FACTUAL HISTORY

On April 3, 2008 appellant, then a 37-year-old nurse, injured her back when a patient she was assisting into bed fell. OWCP accepted her claim for lumbar strain and sacroiliac sprain and strain of the right side. Appellant stopped work and returned to work four hours per day limited duty.

Appellant came under the treatment of Dr. Dennis J. Mateya, a Board-certified physiatrist, from May 20 to October 31, 2008, for a work-related back injury. Dr. Mateya diagnosed lumbar strain and right sacroiliac strain and advised that she was totally disabled. He advised that appellant had prior back surgery at L6-S1. On July 10, 2008 Dr. Mateya returned her to light duty four hours per day and limited her driving to 15 minutes. A July 22, 2008 electromyogram (EMG) revealed no abnormalities. In reports dated August 22 and October 31, 2008, Dr. Mateya continued appellant's work restrictions. A magnetic resonance imaging (MRI) scan of the lumbar spine revealed postsurgical changes from a right-sided laminectomy, left-sided disc bulge at L4-5 and degenerative disc changes at L5-6.

On November 13, 2008 OWCP referred appellant to Dr. Victoria M. Langa, a Board-certified orthopedist, for a second opinion. In a December 2, 2008 report, Dr. Langa indicated that she reviewed the records provided and examined appellant. She diagnosed right L5 radiculopathy and status post L6-S1 disc surgery in 2001. Dr. Langa noted that examination revealed a nonantalgic gait, well-healed midline surgical scar over the lumbar spine which was minimally tender, no muscle spasm, tenderness over the right sciatic notch, there was no swelling or atrophy of the lower extremities, reflexes were symmetric bilaterally, motor and sensory examination was intact with some altered sensation at L5 nerve root and mild weakness of the ankle dorsiflexors. She noted that appellant had clear findings of an L5 radiculopathy with L5 sensory changes and motor weakness. However, the etiology of the L5 radiculopathy was not identified and she recommended further diagnostic work up, specifically a lumbar CT myelogram. Dr. Langa noted that appellant had not reached maximum medical improvement. She opined that appellant could return to work full time with restrictions and also that she was capable of driving.

On January 15, 2009 OWCP requested that Dr. Mateya review Dr. Langa's report and comment on whether he concurred with her opinion that appellant could return to full-time light-duty work.

In a January 30, 2009 report, Dr. Mateya disagreed with Dr. Langa's finding that appellant could return to work full time and advised that she could only work four hours per day limited duty. He indicated that she was undergoing further evaluation and had not reached maximum medical improvement. In a March 19, 2009 work capacity evaluation, Dr. Mateya noted that appellant could work four hours per day with restrictions including no driving more than 15 minutes. In reports dated April 21 and May 22, 2009, he noted that she continued to have problems with her work-related injury and her examination had not changed. Dr. Mateya opined that appellant was close to maximum medical improvement and recommended sacroiliac injections. On March 5, 2009 appellant underwent a lumbar myelogram which revealed disc bulges at L3-4 and L4-5, hypertrophied facets at these levels, minimal symmetric bulging disc

left posterocentrally without nerve root defect and minimal central stenosis at L4-5 and L3-4 secondary to hypertrophied. On April 28, 2009 she underwent right sacroiliac joint injection performed by Dr. M. Nicholas Senchyshak, an osteopath, who diagnosed right sacroiliitis right sacral pain.²

OWCP found that a conflict of medical opinion existed between Dr. Mateya, who indicated that appellant sustained residuals of her work-related injuries of lumbar strain and sacroiliac sprain/strain and could work part time, four hours per day, with restrictions including no driving over 15 minutes, and Dr. Langa, who determined that appellant could work full time with restrictions and could drive.

To resolve the conflict, OWCP on May 15, 2009 referred appellant to a referee physician, Dr. Eric D. Nabors, a Board-certified orthopedist. In a June 2, 2009 report, Dr. Nabors noted reviewing the record, including the history of appellant's work injury, and examining appellant. Examination revealed normal gait, restricted lumbar range of motion, normal motor strength, reflexes were symmetrical bilaterally, normal sensation in all dermatomes of the lower extremities and minimal tenderness to palpation in the lower lumbar region with evidence of a prior hemilaminotomy on the right. Dr. Nabors diagnosed lumbosacral strain with no evidence of postlaminectomy syndrome, disc herniation or lumbar radiculopathy. He opined that any sprain of the sacrum was resolved and that generally lumbosacral strains resolve in days to months and that appellant was 13 months postinjury and that any lumbosacral strain was healed. Dr. Nabors noted that appellant had a resolved lumbosacral strain and sprain of the sacrum and that her current complaints were due to degenerative disease of the lumbar spine without disc herniation. He opined that there had been no aggravation of the preexisting condition. Dr. Nabors noted that appellant had a prior lumbar disc herniation which resolved after surgery and was not contributory to her current complaints. However, appellant did have degenerative disc disease as seen on her MRI scan. Dr. Nabors noted that appellant underwent extensive nonoperative treatment including pain management and physical therapy without improvement. He did not believe that ongoing treatments of this nature would be effective. Dr. Nabors opined that appellant did not have any physical limitations and noted that she had mild degenerative disc disease which should not cause her any disability or inability to perform any of her job duties including riding in a car for an unlimited amount of time for commuting purposes. He opined that she reached maximum medical improvement and did not require any further treatment for her work-related injury. In a June 12, 2009 work capacity evaluation form, Dr. Nabors advised that appellant could perform her usual job without restrictions.

Appellant submitted reports from Dr. Mateya, dated August 21 and November 17, 2009, who noted that appellant continued to have problems with her work injury and showed symptoms of sacroiliac dysfunction, lumbosacral spasm and lumbar radiculopathy. Dr. Mateya noted that appellant's examination was unchanged. In an August 22, 2009 work capacity evaluation, he noted that she could work four hours per day with restrictions including driving

² In a January 15, 2009 investigative memorandum, the employing establishment noted that a criminal investigation surveillance report revealed that appellant was observed driving in excess of the 10 minutes permitted by her treating physician and she did not have any difficulty entering or exiting her vehicle, pushing a grocery cart or loading packages into her vehicle. The investigator noted appellant's actions revealed that she was not totally disabled but could return to work.

limited to 15 minutes. Appellant was treated by Dr. Ashith Mally, a family practitioner, on February 3, 2010 who diagnosed persistent low back pain with radiation.

On November 29, 2010 OWCP issued a notice of proposed termination of all benefits on the grounds that Dr. Nabors' report dated June 2, 2009 established no residuals of the work-related lumbar strain and sacroiliac sprain and strain of the right side.

Appellant submitted a September 27, 2010 work capacity evaluation from Dr. Mateya who noted that appellant could continue to work four hours per day with restrictions including driving limited to 15 minutes. In a December 10, 2010 report, Dr. Mateya noted that appellant continued to have long-term problems with her work-related injury including lumbar radiculopathy, sacroiliac dysfunction, chronic lumbar strain and weakness in the lower extremity. He disagreed with Dr. Nabors' opinion that appellant's condition had resolved and asserted that she continued to have residuals of her work injury and should be limited to her prior work restrictions. Dr. Mateya opined that appellant was at maximum medical improvement and recommended a functional capacity evaluation.

By decision dated December 30, 2010, OWCP terminated appellant's medical and compensation benefits effective January 16, 2011 for the accepted conditions of lumbar strain and sacroiliac sprain and strain of the right side on the grounds that the weight of the medical evidence established that she had no continuing disability or residuals of the accepted employment injuries.

On February 11, 2011 appellant requested reconsideration. In a letter of the same date, she asserted that Dr. Nabors' examination was brief and that she still had residuals of her work injury. Appellant submitted reports from Dr. Mateya dated January 30 to November 17, 2009, all previously of record. She submitted prescription notes from Dr. Mateya dated August 20 and September 23, 2010 which recommended a functional capacity examination and joint blocks. Appellant was treated in the emergency room on August 10, 2010 by Dr. Allan Tissenbaum, an emergency room physician, for a fall with contusions to the right elbow, shoulder and cervical strain. On January 25, 2011 she came under the treatment of Dr. Evgeniy A. Shchelchkov, a Board-certified neurologist, for leg pain that began after a reported accident at work. Dr. Shchelchkov diagnosed lumbosacral radiculopathy and recommended an MRI scan of the lumbar spine and an EMG. He noted that appellant would be off work until a diagnoses was established. In a February 8, 2011 report, Dr. Shchelchkov diagnosed lumbosacral radiculopathy and possible right joint inflammation. A February 3, 2011 nerve conduction study revealed no abnormalities and an EMG revealed chronic neurogenic findings in the right L4-5 and L5-S1 nerve root. Appellant submitted a news report about a police raid at Dr. Nabors' house in October 2009 regarding a party where underage teenagers were allegedly drinking alcohol. Also submitted was an anonymous internet statement from a person who did not approve of treatment by Dr. Nabors.

On March 3, 2011 OWCP denied modification of the decision dated December 30, 2010.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation benefits.³ 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.⁴ The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, OWCP must establish that a claimant no longer has residuals of an employment-related condition, which requires further medical treatment.⁵

ANALYSIS -- ISSUE 1

OWCP accepted appellant's claim for lumbar strain and sacroiliac sprain and strain of the right side. It reviewed the medical evidence and determined that a conflict in medical opinion existed between appellant's attending physician, Dr. Mateya, a Board-certified physiatrist, who indicated that appellant remained partially disabled and unable to drive for more than 15 minutes due to her work injury, and Dr. Langa, an OWCP referral physician, who determined that appellant could work full time with restrictions. Consequently, OWCP referred appellant to Dr. Nabors to resolve the conflict regarding the extent of appellant's accepted condition.

The Board finds that, under the circumstances of this case, the opinion of Dr. Nabors is sufficiently well rationalized and based upon a proper factual background such that it is entitled to special weight and establishes that appellant's work-related lumbar strain and sacroiliac sprain and strain of the right side has ceased. Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.⁶

In his report dated June 2, 2009, Dr. Nabors reviewed appellant's history, reported findings and opined that any lumbar strain and sacroiliac sprain was resolved. He noted that typically lumbosacral strains resolve in days to months and appellant was 13 months from the work injury and any lumbosacral strain would have healed with any continuing symptoms being due to degenerative disc disease. Dr. Nabors indicated that appellant had a resolved lumbosacral strain and sprain of the sacrum and that her current complaints were not work related but were due to lumbar degenerative disease. He indicated that there had been no aggravation of the preexisting condition. Dr. Nabors opined that appellant did not have any physical limitations and noted that her mild degenerative disc disease should not cause her any disability or inability to perform any of her job duties including commuting in a car. He opined that appellant reached

³ *Gewin C. Hawkins*, 52 ECAB 242 (2001); *Alice J. Tysinger*, 51 ECAB 638 (2000).

⁴ *Mary A. Lowe*, 52 ECAB 223 (2001).

⁵ *Id.*; *Leonard M. Burger*, 51 ECAB 369 (2000).

⁶ *Solomon Polen*, 51 ECAB 341 (2000). See 5 U.S.C. § 8123(a).

maximum medical improvement and did not require any further treatment for her work-related injury.

Thereafter, appellant submitted reports from Dr. Mateya dated August 21 and November 17, 2009 who noted that appellant's continued problems with her work-related injury with symptoms of sacroiliac dysfunction, lumbosacral spasm and lumbar radiculopathy. In a December 10, 2010 report, Dr. Mateya disagreed with Dr. Nabors and opined that appellant continued to have residuals of her work injury and should be limited to her prior work restrictions. In August 22, 2009 and September 27, 2010 work capacity evaluations, he noted that appellant could work four hours per day with restrictions including driving limited to 15 minutes. However, Dr. Mateya did not specifically address how any continuing condition or medical restrictions and disability were causally related to the accepted employment injuries. Additionally, he was on one side of the conflict that Dr. Nabors resolved and this report is insufficient to overcome that of Dr. Nabors to create a new medical conflict.⁷ Also submitted was a February 3, 2010 report from Dr. Mally who treated appellant for persistent low back pain with radiation. However, she did not address how any continuing condition or medical restrictions and disability were causally related to the accepted employment injuries.

The Board finds that Dr. Nabors had full knowledge of the relevant facts and evaluated the course of appellant's condition. Dr. Nabors is a specialist in the appropriate field. At the time benefits were terminated he clearly opined that appellant had absolutely no work-related reason for disability. Dr. Nabors' opinion as set forth in his report of June 2, 2009 is found to be probative evidence and reliable. The Board finds that Dr. Nabors' opinion constitutes the weight of the medical evidence and is sufficient to justify OWCP's termination of benefits for the accepted conditions of lumbar strain and sacroiliac sprain/strain has ceased.

LEGAL PRECEDENT -- ISSUE 2

As OWCP met its burden of proof to terminate appellant's compensation benefits, the burden shifted to appellant to establish that she had continuing disability causally related to her accepted employment injury.⁸ To prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that she had an employment-related disability, which continued after termination of compensation benefits.⁹

ANALYSIS -- ISSUE 2

The Board finds that appellant has not established that she has any continuing residuals of her work-related lumbar strain and sacroiliac sprain/strain on or after January 16, 2011.

⁷ See *Michael Hughes*, 52 ECAB 387 (2001); *Howard Y. Miyashiro*, 43 ECAB 1101, 1115 (1992); *Dorothy Sidwell*, 41 ECAB 857 (1990). The Board notes that Dr. Mateya's report did not contain new findings or rationale on causal relationship upon which a new conflict might be based.

⁸ See *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004); *Manuel Gill*, 52 ECAB 282 (2001).

⁹ *I.J.*, 59 ECAB 408 (2008).

After the termination of benefits, appellant submitted reports from Dr. Mateya dated January 30 to November 17, 2009, all previously of record. She submitted prescription notes from Dr. Mateya dated August 20 and September 23, 2010 who recommended a functional capacity examination and joint blocks. However, these reports fail to otherwise provide new medical rationale sufficient to establish that any continuing condition or disability was causally related to the work conditions. As noted, Dr. Mateya was on one side of the conflict that Dr. Nabors resolved and this report is insufficient to overcome that of Dr. Nabors or to create a new medical conflict.¹⁰

Appellant submitted an August 10, 2010 report from Dr. Tissenbaum who treated appellant for a fall with contusions to the right elbow, shoulder and cervical strain. However, this report does not support that appellant had continuing residuals due to her work injury; rather, he addresses a separate nonwork-related fall. Appellant also submitted reports from Dr. Shchelchkov dated January 25 and February 8, 2011, who diagnosed lumbosacral radiculopathy and recommended an MRI scan of the lumbar spine and an EMG. Dr. Schelchkov noted that appellant would be off work until a diagnoses was established. In his January 25, 2011 report, he related that she asserted that her pain began after an accident at work. However, Dr. Shchelchkov indicated that if he was referring to the April 3, 2008 work injury and he failed to provide a rationalized medical opinion¹¹ explaining how any continuing condition or disability was causally related to the work injury. These reports are insufficient to meet appellant's burden of proof.

None of the reports submitted by appellant after the termination of benefits included a rationalized opinion regarding the causal relationship between her current condition and her accepted work-related conditions. Consequently, appellant did not establish that she had any employment-related condition or disability after January 16, 2011.

Appellant also asserted that Dr. Nabors' examination of her was too brief to be thorough. As explained, the record shows that Dr. Nabors reviewed appellant's history, noted findings on examination and determined that her work-related conditions had resolved. There is no evidence establishing any bias or that he was unqualified to render an appropriate medical opinion regarding appellant.

CONCLUSION

The Board finds that OWCP has met its burden of proof to terminate benefits effective January 16, 2011 and that appellant failed to establish that she had any continuing disability due to her accepted condition after January 16, 2011.

¹⁰ See *Michael Hughes, supra* note 7. The Board notes that Dr. Mateya's report did not contain new findings or rationale on causal relationship upon which a new conflict might be based.

¹¹ See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 3, 2011 and December 30, 2010 are affirmed.

Issued: January 11, 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