United States Department of Labor
Employees' Compensation Appeals Board

D.B., Appellant	)	
and	)	**Docket No. 11-1851**
	)	**Issued: July 5, 2012**
U.S. POSTAL SERVICE, POST OFFICE, Philadelphia, PA, Employer	)	

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
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 9, 2011 appellant, through her attorney, filed a timely appeal from a June 27, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 on appeal is whether OWCP properly terminated appellant's compensation and medical benefits effective November 16, 2010.

FACTUAL HISTORY

On May 20, 2009 appellant, then a 51-year-old rural carrier, injured her neck and back when a missing step caused her to fall while delivering mail. She stopped work on the date of the injury. In May 22, 2009 emergency room records, Dr. Vibha P. Gambhir, Board-certified in emergency medicine, noted treating appellant for neck and back pain. In a June 23, 2009 report,

[1] 5 U.S.C. § 8101 *et seq.*

Dr. James T. Guille, a Board-certified orthopedic surgeon and treating physician, noted her history of injury. He examined appellant and diagnosed sprain/strain of the lumbar and cervical spine and a herniated disc. Dr. Guille recommended a magnetic resonance imaging (MRI) scan. A June 27, 2009 MRI scan of the cervical and lumbar spine, read by Dr. Robert Shaw, a Board-certified diagnostic radiologist, revealed discogenic and degenerative changes. OWCP accepted the claim for sprain of the neck and back, lumbar region and paid appellant compensation for injury-related disability for work.

Appellant began receiving treatment from Dr. Jeffrey Citara, a Board-certified physiatrist. In a January 18, 2010 report, Dr. Citara diagnosed right anterior pelvic rotation dysfunction, right sacroiliac joint dysfunction and mild right piriformis syndrome. He noted that the pelvic rotation dysfunction was most likely the mechanical cause of appellant's sacroiliac joint pain, which was her most prevalent pain. Dr. Citara indicated that she was capable of light duty and provided a 10-pound lifting restriction and indicated that she could not kneel, crawl, squat or climb. In a February 15, 2010 report, he repeated his diagnoses and recommended therapy and a fluoroscopic guided sacroiliac joint injection. In an April 26, 2010 report, Dr. Citara advised that appellant continue with her light-duty restrictions and discharged her. The employing establishment was unable to accommodate appellant's restrictions.

On August 19, 2010 OWCP requested that Dr. Citara provide clarification regarding appellant's current condition and her work restrictions.

On August 25, 2010 OWCP referred appellant to Dr. Robert A. Smith, a Board-certified orthopedic surgeon, for a second opinion examination.

In a September 14, 2010 report, Dr. Smith noted appellant's history of injury and treatment which included extensive physical therapy. He noted that the reports revealed that she continued to have pain in her lower pelvic area around the sacroiliac (SI) joints and began seeing Dr. Citara on January 18, 2010. Dr. Smith advised that appellant's complaints at that time were right low back and buttock pain and he diagnosed anterior pelvic rotation dysfunction, SI joint dysfunction and mild right piriformis syndrome. He explained that these conditions were outside the scope of the accepted conditions for the incident and did not appear reasonably related to the work event. Dr. Smith noted that MRI scans of the neck and back revealed age-related degenerative disease but nothing of a post-traumatic nature. He also noted that there was no evidence of acute fracture or dislocation. Dr. Smith noted that examination of the neck and back revealed no finding of any spasm, atrophy, trigger points or deformity. He determined that active range of motion of both of these areas was satisfactory without spasm or rigidity. Neurologic examination was normal, the pelvis was level and no evidence of mal-rotation or derangement of the sacroiliac joints was found. Dr. Smith opined that the accepted conditions of soft tissue sprain of the neck and back related to the work injury had resolved. He found that his examination showed no evidence of any residual from the accepted conditions. Dr. Smith advised that on Dr. Citara's most recent examination, he offered diagnoses not related to the work injury. He opined that, "given the benign nature of the examination at this point and the lack of any identifiable ongoing pathology related to the accepted conditions from the May, 20, 2009 incident [appellant] is clearly at maximum medical improvement, requires no further treatment or testing and could return to regular duty with the [employing establishment] as a rural letter carrier."

On October 6, 2010 a copy of Dr. Smith's second opinion report was forwarded to Dr. Citara, for review.

On October 12, 2010 OWCP issued a notice of proposed termination of compensation. It proposed to terminate appellant's compensation and medical benefits on the basis that the weight of the medical evidence, as represented by the report of Dr. Smith, established that the residuals of the work injury of March 20, 2009 had ceased.

In a letter dated November 9, 2010, appellant disagreed with the proposed termination and enclosed a November 3, 2010 report from Dr. Citara. In his report, Dr. Citara noted that he last saw her on March 29, 2010. He explained that he placed appellant on permanent light duty as he did not believe that she could continue the repetitive work of a mail carrier with her continued condition. Dr. Citara noted that she related that she was seen by Dr. Smith for a second opinion examination on September 14, 2010 and that he did not actually examine her and only saw her for a few minutes. He advised that Dr. Smith was of the opinion that the sacroiliac joint dysfunction was outside the scope of appellant's accepted conditions. Dr. Citara noted that appellant's past medical history remained the same as she continued to suffer from pain in the right buttock and lower lumbar region. He diagnosed right sacroiliac joint dysfunction and right anterior pelvic rotation joint dysfunction. Dr. Citara noted that, prior to seeing him, appellant was initially diagnosed with a lumbar sprain/strain. He opined that "clearly from the mechanism of her injury from a fall it actually resulted more of a sacroiliac joint dysfunction than a lumbar sprain. This was where [appellant's] pain had always been since the day of her injury and it much more correlated with the mechanism of her injury than just the lumbar strain/sprain." Dr. Citara explained that this was a more definitive diagnosis and was "clearly with the given accepted diagnosis." He disagreed with the findings of Dr. Smith as appellant's "pain has always been constant in the right sacroiliac joint each and every time that I have seen her over five visits." Dr. Citara explained that he thoroughly examined appellant as opposed to Dr. Smith, who as indicated by appellant, did not physically examine her. He opined that, based upon the mechanism of injury and the constant location of appellant's pain, her correct diagnosis was actually a right sacroiliac joint dysfunction and should be considered within the scope of a lumbar strain/sprain injury. Dr. Citara recommended that she remain on light duty.

By decision dated November 16, 2010, OWCP terminated appellant's medical and wage-loss compensation benefits effective that date.

On December 9, 2010 appellant's representative requested a telephonic hearing, which was held on April 12, 2011. At the hearing, appellant alleged that Dr. Smith never touched her back and he "never touched" her. Dr. Smith alleged that he tested reflex points with a small hammer, but he did not have her stand up from the chair, nor did he take any measurements for range of motion or atrophy. Appellant further alleged that he did not use his hands to conduct any physical examination on her back or any part of her body. She further testified that she continued to suffer from her injury and could no longer do things she used to do such as gardening and walking her dogs.

By decision dated June 27, 2011, OWCP's hearing representative affirmed the November 16, 2010 decision.

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]

In assessing medical evidence, the weight of such evidence is determined by its reliability, its probative value, and its convincing quality. The opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of the analysis manifested, and the medical rationale expressed in support of the physician's opinion are facts which determine the weight to be given each individual report.[6]

ANALYSIS

OWCP accepted that appellant sustained sprain of the neck, back and lumbar region. It paid appropriate medical benefits and subsequently referred her to Dr. Smith, a Board-certified orthopedic surgeon, for a second opinion. The Board finds that, when OWCP terminated compensation benefits, the weight of the medical evidence rested with Dr. Smith, who submitted a thorough medical opinion based upon a complete and accurate factual and medical history. Dr. Smith performed a complete examination, reviewed the record and advised that appellant had no continued disability from her accepted employment injury, was capable of performing his usual employment and that further medical treatment was unnecessary.

In his September 14, 2010 report, Dr. Smith noted appellant's history of injury and treatment. He explained that she underwent extensive physical therapy and continued to have pain in her lower pelvic area around the SI joints and began seeing Dr. Citara, who diagnosed anterior pelvic rotation dysfunction, SI joint dysfunction and mild right piriformis syndrome. However, Dr. Smith explained that these conditions were outside the scope of the accepted conditions and did not appear reasonably related to the work injury. He supported his conclusion by referring to the initial MRI scans of the neck and back, noting they revealed age-related degenerative disease but nothing of a post-traumatic nature. There also was no evidence of acute

[2] *Lawrence D. Price,* 47 ECAB 120 (1995).

[3] *Id.; see Patricia A. Keller,* 45 ECAB 278 (1993).

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

[5] *Id.*

[6] *See Connie Johns,* 44 ECAB 560 (1993).

fracture or dislocation. Dr. Smith indicated that he examined appellant's neck and back and found no evidence of any spasm, atrophy, trigger points or deformity. He further advised that active range of motion of both of these areas was satisfactory without spasm or rigidity, that the neurologic examination was normal, the pelvis was level and there was no evidence of derangement of the sacroiliac joints. Dr. Smith opined that the accepted conditions of soft tissue sprain of the neck and back had resolved as there was no evidence of any residual from the accepted conditions on examination. He opined that, "given the benign nature of the examination at this point and the lack of any identifiable ongoing pathology related to the accepted conditions from the May, 20, 2009 incident [appellant] is clearly at maximum medical improvement, requires no further treatment or testing and could return to regular duty with the [employing establishment] as a rural letter carrier."

In response to the proposed termination, appellant submitted a November 3, 2010 report from Dr. Citara, who explained that he placed her on light duty and noted that she indicated that Dr. Smith did not actually examine her. Dr. Citara explained that the sacroiliac joint dysfunction was not outside the scope of her accepted conditions as appellant's past medical history remained the same as she continued to have right buttock and lower lumbar pain. He diagnosed right sacroiliac joint dysfunction and right anterior pelvic rotation joint dysfunction. Dr. Citara opined that, "clearly from the mechanism of [appellant's] injury from a fall it actually resulted more of a sacroiliac joint dysfunction than a lumbar sprain" as this was "where her pain had always been since the day of her injury and it much more correlated with the mechanism of her injury than just the lumbar strain/sprain." He disagreed with Dr. Smith as appellant's "pain has always been constant in the right sacroiliac joint each and every time that I have seen her over five visits." Dr. Citara explained that he thoroughly examined appellant as opposed to Dr. Smith, who did not physically examine her. He opined that based upon the mechanism of injury and the constant location of her pain, that her correct diagnosis was actually a right sacroiliac joint dysfunction and should be considered within the scope of a lumbar strain/sprain injury. The Board notes that Dr. Citara's report is insufficiently rationalized to support continuing disability or to create a conflict with that of Dr. Smith.[7] After the May 20, 2009 work injury, Dr. Citara did not examine appellant until January 18, 2010 and did not explain how he arrived at his opinion in light of the earlier diagnostic tests such as the June 27, 2009 MRI scan which revealed discogenic and degenerative changes. Furthermore, he noted back in January 2010 that the pelvic rotation dysfunction was most likely the mechanical cause of her sacroiliac joint pain; he did not provide any explanation as to how the accepted neck and lumbar sprain encompassed other diagnosed conditions.[8] Dr. Citara's report is also based on an inaccurate history as he discredited Dr. Smith's report based upon appellant's allegations that Dr. Smith did not examine her.[9] This

[7] *See* 5 U.S.C. § 8123(a).

[8] *See Jaja K. Asaramo*, 55 ECAB 200 (2004) (where an employee claims a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury).

[9] *See Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions based upon an incomplete history have little probative value).

allegation is unsupported by the record as Dr. Smith's report provides numerous findings and observations on examination.[10] Thus, this report is of diminished probative value.

Because Dr. Smith provided the only rationalized medical opinion of record addressing whether appellant continued to have residuals of her accepted employment injury, his opinion constitutes the weight of the medical evidence. The Board therefore finds that his report establishes that appellant ceased to have any disability or condition causally related to her employment injuries, thereby justifying OWCP's termination of compensation benefits.

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 in terminating appellant's compensation benefits effective November 16, 2010.

[10] Appellant also asserted at the April 12, 2011, hearing that Dr. Smith did not examine her although she also acknowledged that he tested reflex points with a small hammer. As noted, a review of Dr. Smith's report shows that he examined appellant. There is no credible evidence to support that no examination took place. Mere allegations of bias are not sufficient to establish the fact. *See P.F.*, Docket No. 06-1160 (issued August 25, 2006).

ORDER

IT IS HEREBY ORDERED THAT the June 27, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 5, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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