

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

B.A., Appellant)	
)	
and)	Docket No. 11-1928
)	Issued: June 4, 2012
DEPARTMENT OF STATE, OFFICE OF)	
PERSONNEL, Washington, DC, Employer)	
)	

Appearances: *Case Submitted on the Record*
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On August 23, 2011 appellant, through counsel, filed a timely appeal from a July 14, 2011 decision of the Office of Workers' Compensation Programs (OWCP) concerning the termination of her compensation benefits. 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.

ISSUES

The issues are: (1) whether OWCP properly terminated appellant's compensation for wage-loss and medical benefits effective November 22, 2009 on the grounds that she no longer had any residuals or disability causally related to her accepted employment-related injury; and (2) whether she had any continuing employment-related residuals or disability after November 22, 2009.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On November 16, 1988 appellant, then a 50-year-old bindery worker, filed a traumatic injury claim alleging that on November 15, 1988 she injured her lower back while bending over to clear a jam in a xerox machine. OWCP accepted the claim for aggravation of low back sprain and lumbosacral joint sprain, which was expanded to include aggravation/exacerbation of preexisting lumbar degenerative disc disease. Appellant was placed on the periodic rolls for temporary total disability effective May 18, 1989.

In a January 21, 2008 report, Dr. Daniel R. Ignacio, a treating Board-certified physiatrist, diagnosed lumbar disc syndrome and lumbar radiculopathy. Physical findings included limited lumbar paraspinous motion, paraspinous muscle spasm, tenderness along the L4 to S1 levels, positive straight leg raising and tenderness along the left sacroiliac joint side.

On October 31, 2008 Dr. Robert A. Smith, a second opinion Board-certified orthopedic surgeon, diagnosed lumbar strain and temporary aggravation of a preexisting lumbar degenerative disc disease. A physical examination of the spine revealed no atrophy, trigger points, spasm or deformity. Dr. Smith also reported a satisfactory active range of motion and normal neurological examination with no confirmable radiculopathy or neurological deficit. He concluded that appellant no longer had any residuals or disability due to her accepted work injuries. In support of this conclusion, Dr. Smith noted the lack of any clinical findings supporting that the accepted conditions were still active. He indicated that appellant was capable of sedentary work and restrictions which were due to her advanced age and not to her employment injury.

In a November 25, 2008 supplemental report, Dr. Smith reiterated his conclusion that there was no objective evidence supportive of any continued residuals or disability due to the accepted lumbar strain and aggravation of a preexisting degenerative disc disease.

On December 4, 2008 OWCP referred appellant to Dr. James J. York, a Board-certified orthopedic surgeon, to resolve the conflict in the medical opinion between Drs. Smith and Ignacio on the issue of whether appellant continued to have any residuals and disability due to her accepted work conditions. In a December 18, 2008 report, Dr. York diagnosed lumbar strain and temporary aggravation of preexisting degenerative lumbar spondylosis. A physical examination revealed moderate tenderness in the L3 to S1 spinal area, normal strength and sensory examination, 70 degrees forward flexion and 10 degrees extension. Dr. York opined that appellant continued to have residuals of her lumbar spondylosis which are unrelated to her accepted employment injury. He noted that the injury was fairly trivial and caused a sprain, strain and temporary aggravation of her preexisting lumbar spondylosis. Based on a review of the medical records, Dr. York reported that there was some improvement seen and a recommendation to return to light-duty work was made. He opined that the "20-year progression of lumbar spondylosis is inherent to the nature of the disease" and unrelated to the low level strain she sustained while leaning over and clearing paper from a photocopy machine.

Following receipt of Dr. York's report, OWCP received medical reports, disability notes and a work restriction report from Dr. Ignacio who provided physical findings and opined that appellant continued to have residuals and disability from her accepted employment injury. Dr. Ignacio noted that appellant sustained a work injury to the lumbar spine on November 15, 1988 and has had chronic lumbar pain since then. His diagnoses included chronic low back pain,

chronic progressive lumbar disc syndrome, post-traumatic lumbar spinal stenosis and chronic lumbar radiculopathy.

On March 13, 2009 Dr. Philip B. Bovell, a treating physician, noted that on November 15, 1988 appellant sustained an injury to her back while bending over to pick up a stack of papers. Since the date of the injury appellant has had pain and discomfort. Dr. Bovell diagnosed chronic L5-S1 bilateral radioculopathies and recommended a home exercise program. Subsequently, he provided updated reports containing physical finding and treatment for appellant's chronic pain and discomfort in the lumbosacral spine.

On October 13, 2009 OWCP issued a notice proposing to terminate appellant's compensation benefits based upon the report of Dr. York, the impartial medical adviser.

Subsequent to the proposed termination, OWCP received reports dated January 21, 2008, September 13 and October 28, 2009 from Dr. Ignacio noting that appellant was seen for injuries sustained due to the November 15, 1988 employment injury. On January 21, 2008 Dr. Ignacio reported limited lumbar motion, spasm and tenderness in the L4, L5 and S1 spine, positive straight leg raising and sacroiliac joint tenderness and that appellant reported increased lower back pain. Diagnoses from the reports include chronic low back pain, chronic progressive lumbar disc syndrome/lumbar disc polyradiculopathy, multilevel cervical spinal stenosis, lumbar disc syndrome, lumbar radiculopathy, post-traumatic lumbar spinal stenosis and accelerated lumbar degenerative disc disease. In the October 28, 2009 report, Dr. Ignacio opined that the accelerated lumbar degenerative disc disease was directly related to the November 15, 1988 employment injury. He disagreed with Dr. York's conclusion that appellant's employment-related conditions had resolved and that her current condition is unrelated to the November 15, 1988 injury. According to Dr. Ignacio appellant's current condition represented a progression and continuation of the injury she sustained on November 15, 1988 included accelerated lumbar disc disease and the development of post-traumatic spinal lumbar stenosis. He related that a review of the medical records supports his conclusion that her current condition represents a progression of the injuries sustained as a result of the November 15, 1988 employment injury.

By decision dated November 18, 2009, OWCP finalized the termination of appellant's compensation benefits effective November 22, 2009. It found the opinion of Dr. York, the impartial medical adviser, constituted the weight of the evidence.

Following the termination of appellant's benefits OWCP received reports dated October 28 and November 10, 2009 from Dr. Ignacio. These reports noted an injury date of November 15, 1988, reported physical findings and diagnoses of lumbar stenosis, bilateral L5, S1 radiculopathy, chronic progressive lumbar disc syndrome/lumbar disc polyradiculopathy, accelerated lumbar degenerative disc disease and post-traumatic lumbar stenosis.

On December 15, 2009 appellant requested reconsideration and submitted the following evidence in support of her request.

In a December 11, 2009 report, Dr. Bovell noted that appellant was evaluated for lumbosacral discomfort and chronic pain with radiculopathy into the legs. He disagreed with the conclusions of Drs. York and Smith that appellant's accepted work conditions had resolved. In support of his conclusion, Dr. Bovell noted the objective evidence including appellant's

continual discomfort and inability to function commenced with her November 15, 1988 employment injury and has progressively worsened.

On December 19, 2009 Dr. Ignacio stated that appellant sustained a lumbar injury as a result of her accepted November 15, 1988 employment injury. Diagnoses included aggravation of lumbar degenerative disc disease due to a 1975 injury, chronic lumbar strain and chronic lumbar disc syndrome with chronic lumbar radiculopathy. Dr. Ignacio reported that appellant initially did well following the injury and returned to work, but the condition failed to resolve and worsened. Since the injury appellant has had continuing low back pain problems which has become more pronounced and has extended to lower extremity numbness. A physical examination revealed tenderness along the L2-3 and L5-S1 interspinous ligament, multiple trigger points in the lumbar paraspinal muscles and limited lumbar flexion. In concluding, Dr. Ignacio opined that the diagnosed conditions were all due to the injuries appellant sustained on November 15, 1988 with the aggravation of the lumbar disc disease due to a 1975 employment injury. He opined that a 1982 automobile accident was a minor injury, has no relation to the November 15, 1988 employment injury and, thus, had no bearing on her current medical condition.

By decision dated February 17, 2010, OWCP denied modification. It found Dr. York's opinion continued to constitute the weight of the medical evidence.

On March 5, 2010 Dr. Bovell noted that appellant's symptoms have continued since the November 15, 1988 employment injury contrary to Dr. York's finding that her symptoms had subsided. He opined that Dr. York's statement that appellant's condition had resolved was "not a reasonable rationale to disprove the symptoms that [appellant] was having over the period of time." Dr. Bovell also related that appellant's current condition and symptoms was a natural progression of her accepted 1988 employment injury and "showed the progression of [appellant's] symptoms did not subside." According to Dr. Bovell "it is a known fact that the injured part will worsen more rapidly than the natural course of degeneration of that injured part."

On March 13, 2010 OWCP received appellant's request for reconsideration.

By decision dated June 10, 2010, OWCP denied modification.

On June 21, 2010 appellant requested reconsideration.

By decision dated July 14, 2011, OWCP denied modification.

In an August 26, 2010 report, Dr. Ignacio provided physical findings and diagnosed chronic lumbar strain syndrome, aggravated degenerative lumbar disc disease, post-traumatic lumbar stenosis and accelerated post-traumatic lumbar degenerative disc disease, which were all caused by the November 15, 1988 employment injury. He explained that as a result of the injury appellant was disabled from work due to the intensity of her back condition. Dr. Ignacio opined that the natural progression of her condition is a result of the November 15, 1988 employment injury and not the natural progression of her degenerative disc disease. His rationale for this conclusion is that the November 15, 1988 employment injury caused a lumbar strain and aggravated her lumbar degenerative disc disease, which was the direct cause of the acceleration of her lumbar degenerative disc disease. In concluding, Dr. Ignacio related that appellant

continues to be disabled and have residuals of the November 15, 1988 employment injury as her accepted injuries had never ceased. He related that she continues to suffer from her progressive symptoms and accelerated lumbar degenerative disc disease with post-traumatic lumbar stenosis.

By decision dated July 14, 2011, OWCP denied modification.²

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.³ After it has determined that an employee has disability causally related to 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 OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁶ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.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 Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background must be given special weight.⁹

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained aggravation of low back sprain, lumbosacral joint sprain and aggravation/exacerbation of preexisting lumbar degenerative disc disease due to the accepted November 11, 1988 employment injury. Appellant was placed on the periodic rolls for temporary total disability by letter dated May 18, 1989.

² The Board notes that, following the July 14, 2011 decision, OWCP received additional evidence. However, the Board may only review evidence that was in the record at the time OWCP issued its final decision. See 20 C.F.R. § 501.2(c)(1); *M.B.*, Docket No. 09-176 (issued September 23, 2009); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

³ *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁴ *I.J.*, 59 ECAB 524 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

⁵ See *J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

⁶ *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁷ *Kathryn E. Demarsh, id.*; *James F. Weikel*, 54 ECAB 660 (2003).

⁸ 5 U.S.C. § 8123(a); *R.C.*, 58 ECAB 238 (2006); *Darlene R. Kennedy*, 57 ECAB 414 (2006).

⁹ *V.G.*, 59 ECAB 635 (2008); *Sharyn D. Bannick*, 54 ECAB 537 (2003); *Gary R. Sieber*, 46 ECAB 215 (1994).

On January 21, 2008 Dr. Ignacio, a treating Board-certified physiatrist, diagnosed lumbar disc syndrome and lumbar radiculopathy. In an October 31 and November 24, 2008 supplemental report, Dr. Smith, a second opinion Board-certified orthopedic surgeon, concluded that appellant no longer had any residuals or disability due to her accepted work injuries. OWCP found a conflict between Dr. Smith and Dr. Ignacio, and selected Dr. York, a Board-certified orthopedic surgeon, as impartial medical examiner. In his December 18, 2008 report, Dr. York attributed appellant's disability to her preexisting degenerative lumbar spondylosis and that she no longer had any residuals or disability as a result of her accepted employment injury. Based on his opinion OWCP terminated appellant's compensation and medical benefits effective November 22, 2009.

Dr. York conducted an impartial medical examination on December 8, 2008 as well as reviewing appellant's history of injury and medical history. He diagnosed lumbar strain and temporary aggravation of preexisting degenerative lumbar spondylosis. Dr. York's extensive review of the medical records led him to opine that appellant's condition was not the result of her accepted employment injury, but instead represented a natural progression of her preexisting lumbar spondylosis. In support of this conclusion, he related that the employment injury was fairly trivial and caused a sprain, strain and temporary aggravation of her preexisting lumbar spondylosis. Dr. York concluded that appellant had no work-related residuals as her accepted conditions had resolved with no disability.

The Board finds that Dr. York's report was entitled to the special weight of the medical evidence. Dr. York provided a detailed report reviewing the medical records and noting that appellant's current condition was a natural progression of preexisting lumbar spondylosis and unrelated to the accepted employment injuries. He explained why he determined that appellant's current condition was not due to her employment as the initial injury was fairly trivial. Dr. York attributed her condition to her preexisting lumbar spondylosis. As his report is based on a proper factual history, provided findings and included medical reasoning, supporting his conclusions, the Board finds that OWCP met its burden of proof to terminate appellant's compensation and medical benefits.

Prior to the termination of her compensation benefits, appellant submitted various medical reports from Dr. Ignacio opining that appellant continued to have residuals and disability from the accepted November 15, 1988 employment injury. Dr. Ignacio diagnoses included chronic low back pain, chronic progressive lumbar disc syndrome, post-traumatic lumbar spinal stenosis and chronic lumbar radiculopathy. The only rationale given by him for continued employment-related residuals and disability was the lumbar pain appellant has had since the injury. As Dr. Ignacio was on one side of a conflict which was resolved by Dr. York and his reports do not otherwise provide new findings or medical rationale, his reports are insufficient to establish there are any continuing conditions or residuals due to the accepted November 15, 1988 work injury.¹⁰

Appellant also submitted reports from Dr. Bovell noting an employment injury was sustained on November 15, 1988, physical findings and treatment. Dr. Bovell diagnosed chronic

¹⁰ See *I.J.*, 59 ECAB 408 (2008); *Michael Hughes*, 52 ECAB 387 (2001); *Howard Y. Miyashiro*, 43 ECAB 1101, 1115 (1992); *Dorothy Sidwell*, 41 ECAB 857 (1990).

L5-S1 bilateral radioculopathies. However, this condition has not been accepted by OWCP.¹¹ In addition, Dr. Bovell's reports are of diminished probative value because he has not provided any supporting rationale explaining how her condition was a result of her accepted employment injury. The Board has held opinions unsupported by rationale are entitled to little probative value.¹² Therefore, Dr. Bovell's reports are insufficiently rationalized to outweigh Dr. York's opinion or create a conflict of medical opinion.

LEGAL PRECEDENT -- ISSUE 2

As OWCP met its burden of proof to terminate appellant's compensation benefits, the burden shifted to her to establish that she had any disability causally related to her accepted injury.¹³

ANALYSIS -- ISSUE 2

Following OWCP's November 18, 2009 decision terminating her compensation benefits, appellant submitted additional medical reports from Dr. Ignacio and Dr. Bovell. In his reports, Dr. Ignacio essentially reiterated his findings and conclusion that she continued to be disabled from the employment injury. The Board has long held that reports from a physician who was on one side of a medical conflict that an impartial specialist resolved, are generally insufficient to overcome the weight accorded to the report of the impartial medical examiner or to create a new conflict.¹⁴ Dr. Ignacio had been on one side of the conflict resolved by Dr. York.

Appellant also submitted reports from Dr. Bovell noting his disagreement with Dr. York that appellant's accepted employment injuries had resolved as her symptoms have continued since the injury. Dr. Bovell also found appellant's current condition was a result of a natural progression of her accepted employment injury. However, he provides only a conclusory statement on causal relationship without providing medical reasoning or rationale to support his opinion. The Board has found that unrationalized medical opinions on causal relationship have little probative value.¹⁵ Thus, Dr. Bovell's report is insufficient to create a conflict with Dr. York's opinion

Thus, the Board finds that appellant submitted insufficient rationalized medical evidence to establish a causal relationship between her condition on and after November 22, 2009 and the accepted aggravation of low back sprain and lumbosacral joint sprain and aggravation/exacerbation of preexisting lumbar degenerative disc disease. Therefore, appellant has failed to meet her burden of proof.

¹¹ *Charles W. Downey*, 54 ECAB 421 (2003); *Alice J. Tysinger*, 51 ECAB 638 (2000) (for conditions not accepted by OWCP as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not OWCP's burden to disprove such relationship).

¹² *T.M.*, Docket No. 08-975 (issued February 6, 2009); *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

¹³ *See Joseph A. Brown, Jr.*, 55 ECAB 542 (2004); *Manuel Gill*, 52 ECAB 282 (2001).

¹⁴ *See I.J.*, *supra* note 10; *Michael Hughes*, *supra* note 10; *Howard Y. Miyashiro*, *supra* note 10; *Dorothy Sidwell*, *supra* note 10.

¹⁵ *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

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 benefits and that she has failed to meet her burden of proof in establishing any continuing disability or medical residuals on or after November 22, 2009.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 14, 2011 is affirmed.

Issued: June 4, 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