

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

M.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Moss Point, MS, Employer**

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**Docket No. 11-1967
Issued: June 5, 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
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 22, 2011 appellant filed a timely appeal of the March 3, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) terminating her wage-loss compensation benefits.¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ Under the Board's *Rules of Procedure*, the 180-day time period for determining jurisdiction is computed beginning on the day following the date of OWCP's decision. *See* 20 C.F.R. § 501.3(f)(2). As OWCP's merit decision was issued on March 3, 2011, the 180-day computation begins March 4, 2011. 180 days from March 4, 2011 was August 30, 2011. Since using August 31, 2011 the date the appeal was received by the Clerk of the Board, would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is August 22, 2011, which renders the appeal timely filed. *See* 20 C.F.R. § 501.3(f)(1).

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether OWCP properly terminated appellant's wage-loss compensation effective March 13, 2011 on the grounds that she no longer had any disability causally related to her accepted employment-related injury.

FACTUAL HISTORY

On March 8, 1973 appellant, then a 38-year-old letter carrier, filed a claim alleging that she sustained a urinary condition for which she underwent an anterior and posterior vaginal repair on January 10, 1973 due to her repetitive work duties.³ OWCP accepted her claim for cystocele and rectocele.

On November 22, 1975 appellant again underwent anterior and posterior vaginal repair. On May 17, 2006 she underwent a cystoscopy and retrograde pyelogram to treat her severe stress urinary incontinence, possible fistula. Appellant underwent urodynamics on June 6, 2006 to treat her urinary incontinence.

By letter dated June 17, 2010, OWCP requested that appellant submit a physician's medical report regarding her current condition to determine whether she was entitled to compensation benefits for continuing residuals and total disability. Appellant was afforded 60 days to submit the requested evidence. She did not respond.

On July 28, 2010 OWCP referred appellant, together with a statement of accepted facts and medical record, to Dr. Thomas W. Coleman, a Board-certified urologist, for a second opinion on the nature and extent of her employment-related residuals and disability.

In a September 3, 2009 report, Dr. Coleman obtained a history that appellant fell in 1968 and subsequently underwent three unsuccessful surgeries to correct her urinary incontinence. He noted that she had not worked since 1977 when she was apparently totally disabled due to her urinary condition.⁴ Appellant refused to lose weight to undergo a sling procedure that was offered to her on several occasions as treatment. Her complaints on the date of examination included significant stress urinary incontinence and urgency incontinence at night. Appellant also had several urinary tract infections in the prior year's which were treated with medication. On physical examination, Dr. Coleman listed essentially normal findings with the exception of labored breathing and costovertebral angle (CVA) tenderness on the right side of the abdomen which was unimpressive. He advised that appellant had stress urinary incontinence due to her work injuries, but she refused treatment to correct the condition. Appellant did not have any complaints of pain. Dr. Coleman stated that she could have undergone the relatively simple outpatient surgical procedure to correct her incontinence and been rehabilitated many years ago.

³ Prior to the instant claim, appellant filed a claim under OWCP File No. xxxxxx776 for an injury she sustained on October 6, 1970 when she slipped and fell on steps. OWCP accepted her claim for hematoma of the right hip and bruised coccyx. It paid appellant appropriate compensation.

⁴ The record reveals that on June 10, 1987 appellant was released to return to light-duty work with restrictions. OWCP referred her for vocational rehabilitation. Appellant's vocational rehabilitation case was subsequently closed because the employing establishment could not provide suitable work.

He believed that the sling surgeries offered to appellant would have had a high success rate. Although appellant contended that she had social limitations in her ability to work due to her stress urinary incontinence, Dr. Coleman stated that many people work with stress and urge incontinence and wear protective hygiene without difficulty. He concluded that appellant could reach maximum recovery by undergoing the surgery that had been recommended to her for over 10 years. In a work capacity evaluation dated October 6, 2010, Dr. Coleman advised that she could perform her regular work duties with no restrictions.

By letter dated October 25, 2010, OWCP requested that Dr. Charles F. White, Jr., an attending Board-certified urologist, review Dr. Coleman's September 3, 2009 report and address whether he agreed with the recommended work restrictions.

In a November 5, 2010 report, Dr. White stated that he concurred with Dr. Coleman's opinion.

On January 25, 2011 OWCP issued a notice of proposed termination of appellant's wage-loss compensation. It found that the weight of the medical evidence, as represented by Dr. Coleman's referral opinion, established that she was no longer disabled due to her accepted cystocele and rectocele. Appellant was advised that the proposed decision did not apply to medical benefits for treatment for her accepted condition.

In a February 8, 2011 letter, appellant disagreed with the proposed action. She contended that Dr. Coleman prescribed medication without conducting a physical examination. Dr. Coleman also provided false statements in his report.

In a March 3, 2011 decision, OWCP terminated appellant's wage-loss compensation effective March 13, 2011. It found that the weight of the medical evidence rested with the opinion of Dr. Coleman, as supported by that of Dr. Smith. OWCP advised appellant that she would continue to receive medical benefits for her accepted conditions.

LEGAL PRECEDENT

Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to her employment, it may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.⁵ OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶ Furthermore, 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 that requires further medical treatment.⁷

⁵ *Jason C. Armstrong*, 40 ECAB 907 (1989).

⁶ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁷ *Mary A. Lowe*, 52 ECAB 223 (2001); *Wiley Richey*, 49 ECAB 166 (1997).

ANALYSIS

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation as of March 13, 2011. The Board accepted that she sustained cystocele and rectocele while in the performance of duty. OWCP subsequently referred appellant to Dr. Coleman for a second opinion evaluation.

Dr. Coleman's September 3, 2009 report reviewed a history of appellant's urinary condition and medical treatment. He found that, although she continued to have urinary stress incontinence causally related to the accepted injuries, she could perform her regular work duties as a letter carrier, eight hours a day. Dr. Coleman's findings were essentially normal with the exception of labored breathing and CVA tenderness on the right side of the abdomen which was unimpressive. He stated that appellant could have undergone the previously recommended simple outpatient surgical sling procedure to correct her incontinence and been rehabilitated many years ago. Dr. Coleman further stated that despite her contention that she had social limitations due to her stress urinary incontinence which affected her ability to work, many people work with stress and urge incontinence and wear protective hygiene without difficulty. He advised that appellant could reach maximum recovery by undergoing the surgery that had been recommended to her for over 10 years. In an October 6, 2010 work capacity evaluation, Dr. Coleman opined that she could perform her regular work duties with no restrictions.

The Board finds that Dr. Coleman's reports represent the weight of the medical evidence and that OWCP properly relied on his reports in terminating appellant's wage-loss compensation for the accepted conditions on March 3, 2011. Dr. Coleman's opinion is based on a proper factual and medical history as he reviewed a statement of accepted facts and appellant's prior medical treatment. He also related his comprehensive examination findings in support of his opinion that appellant's continuing residuals of the accepted work-related conditions of cystocele and rectocele did not prevent her from performing her regular work duties, eight hours a day with no limitations. Dr. Coleman's opinion is supported by Dr. Smith, an attending physician, who agreed on November 5, 2010 that appellant could work eight hours a day with no restrictions. Appellant's contention that Dr. Coleman failed to conduct a thorough examination is not supported by the record on appeal.

There is no other medical evidence contemporaneous with the termination of appellant's benefits which supports that she has any continuing disability from her employment-related conditions. OWCP, therefore, met its burden of proof to terminate her disability compensation.

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 properly terminated appellant's wage-loss compensation effective March 13, 2011 on the grounds that she no longer had any disability causally related to her accepted employment-related cystocele and rectocele.

ORDER

IT IS HEREBY ORDERED THAT the March 3, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 5, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board