

On appeal, counsel contends that the opinion of the impartial medical examiner is not sufficiently rationalized.

FACTUAL HISTORY

On March 19, 2007 appellant filed a traumatic injury claim alleging low back pain while picking up letter trays. On May 30, 2007 OWCP accepted her claim for a lumbar sprain/strain.

Appellant was treated by Dr. Frederick George, a Board-certified orthopedic surgeon. In a July 26, 2007 report, Dr. George advised that she returned complaining of continuing pain in her low back area with no radicular pain to the lower extremities. He stated that appellant would continue at light-limited work, heat, exercises and physical therapy. On August 10, 2007 Dr. George noted that she had not improved. On August 23, 2007 he stated that appellant continued to have moderate discomfort in her low back. Appellant stated that her present light duty severely aggravated her pain and she could not stand for any length of time. Dr. George noted that she would benefit from epidural steroid injections and should continue with light-limited work, which would involve mostly sitting for six hours, and standing or walking only one hour per day.

On August 20, 2007 OWCP referred appellant to Dr. Robert Draper, a Board-certified orthopedic surgeon, for a second opinion. In a September 7, 2007 report, Dr. Draper diagnosed a lumbosacral strain (annular bulging with broad-based disc herniation impinging upon the thecal sac at L3-4; annular disc bulging centrally effacing the thecal sac at L4-5). He noted preexisting degenerative changes involving the disc at L3-4 and L4-5 that were related to underlying degenerative conditions and not to the accepted injury. Dr. Draper noted that there was no acceleration of the degenerative condition. He explained that a lumbosacral strain was a soft tissue injury which usually resolves in about three to four months and that therefore the soft tissue injury had resolved. Dr. Draper opined that appellant was capable of performing her work as a letter carrier with some restrictions which are due to the preexisting condition. He noted that due to the preexisting conditions she may not lift more than 50 pounds on a permanent basis, but could work 8 to 10 hours, five to six days a week.

On November 27, 2007 OWCP proposed terminating appellant's compensation benefits based on the opinion of Dr. Draper.

Dr. George continued to submit reports advising that appellant had continuing pain in her low back area but could continue in modified work.

By decision dated January 17, 2008, OWCP terminated appellant's medical and wage-loss compensation benefits effective that date.

On January 25, 2008 appellant, through counsel, requested a hearing.

In a January 24, 2008 report, Dr. George noted that appellant had been treated since June 26, 2007 for her low back. Appellant injured her back while working on March 19, 2007. Dr. George noted that she continued to have chronic pain in her low back pain. He opined that appellant had a lumbosacral strain which was the direct result of lifting on her job. While appellant had some preexisting degenerative disc disease of her lumbar spine that was

aggravated by the injury, she remained symptomatic and could not return to her regular job. Dr. George noted that she was capable of doing light sedentary-type work.

At the April 22, 2008 hearing, appellant described the duties of her job when she was injured, the incident and her return to work on July 6, 2007 with restrictions. She noted that she still experienced low back pain.

Appellant submitted a magnetic resonance imaging (MRI) scan dated February 29, 2008 that was interpreted as showing disc desiccation, annular bulge and central disc herniations at L3-4 and L4-5. She was seen in a local emergency room on October 19, 2007, January 19 and March 17, 2008.

By decision dated July 28, 2008, the hearing representative found that OWCP met its burden of proof in terminating appellant's compensation benefits based on the report of Dr. Draper. The hearing representative found a conflict arose between Dr. Draper and Dr. George such that the case should be referred to an impartial medical examiner.

On remand, OWCP referred appellant to Dr. Roy B. Friedenthal, a Board-certified orthopedic surgeon, for an impartial medical examination. In a report dated August 19, 2009, Dr. Friedenthal listed his impressions as status post lumbar strain by history and mild degenerative disc disease of the lumbar spine. He found that appellant no longer had residuals of the lumbar sprain as the injury had resolved. Dr. Friedenthal noted that it likely resolved within three to four months of offset. Appellant suffered from early degenerative disc disease of the lumbar spine which was unrelated to the work injury. Dr. Friedenthal further advised that she could return to full-duty work with restrictions against repetitive bending and heavy lifting of greater than 50 pounds on a permanent basis. His examination showed no residuals of the accepted sprain injury. Dr. Friedenthal noted that the evaluation was characterized by numerous features of symptom magnification with no objective evidence of deficit, noting no muscle spasm or radiculopathy. The diagnostic workup reported disc bulge/central herniation in the context of degenerative disc disease. The first study was obtained within several weeks of the reported injury and there were no traumatic changes such as edema, hemorrhage, ligamentous disruption, disc extrusion, abnormal bone signal or abnormal ligament of muscle signal that were identified. Therefore, no structural injury occurred at the time of the accepted lifting episode. Dr. Friedenthal noted that the MRI scan showed disc bulge/central herniation but this was due to the degenerative disease. He addressed underlying degenerative disc disease with obesity and cigarette smoking as likely contributory factors to early the degenerative changes. While appellant did have a flare up of the condition secondary to her lifting activity at work, she had fully recovered based on the fact that her ongoing complaints were not consistent with the evidence from the medical records or on clinical evaluation. Dr. Friedenthal opined that secondary gain and/or psychological factors were likely in this individual. Without appropriate reconditioning, appellant should limit the extremes of strenuous activity. Dr. Friedenthal agreed with Dr. Draper's recommendation of a lifting restriction of no more than 50 pounds on occasion and lifting should be done with appropriate respect for proper lifting mechanics. He further opined that appellant could return to work at a full-duty status with physical tasks respecting her physical status as one would do with assigning tasks to any individual. In an April 6, 2010 report, Dr. Friedenthal noted that his evaluation did not find any evidence of aggravation of the preexisting degenerative disease process. In this case, the prior degenerative process may have

been exacerbated by the superimposed strain, but likely resolved within three to four months of onset.

By decision dated April 21, 2010, OWCP denied modification of the July 28, 2008 decision. It found that appellant's continuing condition was not caused by her work or the accepted injury.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.² Having determined that an employee has a disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.³

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.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

ANALYSIS -- ISSUE 1

OWCP accepted that on March 19, 2007 appellant sustained a lumbar sprain/strain and paid appropriate compensation and medical benefits. It terminated her compensation benefits effective January 17, 2008 finding that she no longer had any residuals or disability that were due to her work injury. The Board finds that OWCP properly terminated appellant's medical and wage-loss compensation benefits effective that date.

Dr. George submitted multiple progress reports noting generally that appellant had ongoing pain in the low back and should continue to perform modified work. Dr. Draper, the second opinion physician, noted preexisting degenerative changes involving the disc at L3-4 and L4-5 that were related to degenerative disease and not to the employment injury. He found that there was no acceleration of the degenerative conditions in the disc by the employment injury and that her soft tissue injury had resolved in three to four months. Dr. Draper further opined that appellant was capable of performing her work as a letter carrier with some restrictions which are due to the preexisting conditions.

The Board finds that the weight of the medical opinion evidence lies with Dr. Draper. In Dr. George's reports that predate the termination of benefits on January 17, 2008, he did not provide a narrative opinion addressing appellant's disability or relationship to the accepted

² *Bernadine P. Taylor*, 54 ECAB 342 (2003); *C.R.*, Docket No. 11-1445 (issued January 26, 2012).

³ *Id.*

⁴ *Roger P. Payne*, 55 ECAB 535 (2004).

⁵ *Pamela K. Guesford*, 53 ECAB 726 (2002).

injury. He did not offer any explanation as to why appellant's condition had not improved or provide physical findings or medical rationale to support his conclusions. Dr. George appeared to base his opinion on her subjective complaints.⁶ OWCP properly determined that Dr. Draper's well-reasoned second opinion report represented the weight of the medical evidence. Dr. Draper's report was sufficiently thorough, probative and well rationalized and constituted sufficient medical evidence for OWCP to rely upon in its January 17, 2008 decision terminating benefits.⁷

LEGAL PRECEDENT -- ISSUE 2

After OWCP met its burden of proof to terminate compensation, the burden shifted to appellant to establish that he had ongoing disability causally related to his accepted injury.⁸

Section 8123(a) of FECA provides that, 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.⁹ In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized based upon a proper factual background, must be given special weight.¹⁰

ANALYSIS -- ISSUE 2

After OWCP terminated appellant's benefits, the burden of proof shifted to appellant to establish entitlement to compensation after January 17, 2008.¹¹ In a January 24, 2008 report, Dr. George discussed his treatment of appellant. He noted that appellant had preexisting degenerative disc disease in her lumbar spine that he found was aggravated by the injury she sustained on the job and remained symptomatic. Appellant could not return to her regular job but was capable of light sedentary-type work. Dr. George's opinion was sufficient to create a conflict in medical opinion with Dr. Draper, the second opinion physician. Accordingly, OWCP properly referred appellant to Dr. Friedenthal for an impartial medical examination, pursuant to 5 U.S.C. § 8123(a). Dr. Friedenthal submitted a detailed and rationalized opinion wherein he concluded that appellant had a prior degenerative process that may have been exacerbated by the strain, but that such exacerbations likely resolved three or four months, and that appellant had fully recovered from her employment-related strain. In explaining his conclusion, he noted that his examination showed no residuals of the reported sprain or strain injury. Dr. Friedenthal

⁶ See *R.H.*, Docket No. 11-889 (issued November 21, 2011).

⁷ *A.H.*, Docket No. 07-87 (issued August 9, 2007).

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

⁹ 5 U.S.C. § 8123(a).

¹⁰ *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

¹¹ *V.L.*, Docket No. 10-328 (issued March 3, 2011).

noted that appellant's evaluation was characterized by symptom magnification and that it showed no objective evidence of deficit such as muscle spasm or radiculopathy. He also opined that no structural injury occurred at the time of the reported lifting episode. Dr. Friedenthal noted underlying contributing factors of obesity and cigarette smoking, which he believed were likely contributing factors to appellant's early degenerative changes. His well-rationalized opinion that appellant's employment-related lumbar sprain/strain had resolved constitutes the special weight of the medical evidence afforded to an impartial medical specialist. Although appellant visited the emergency department on multiple occasions, these reports do not provide any rationalized medical opinion that these visits were related to her employment injury. The Board, therefore, finds that she did not meet her burden of proof to establish that she had residuals from her accepted employment injury after January 17, 2008.

The Board is not persuaded by appellant's counsel's arguments that Dr. Friedenthal's opinion was not rationalized. Initially, the Board notes that as Dr. Friedenthal's opinion was issued after the termination of benefits, the burden of submitting medical evidence in support of continuing employment-related residuals rested with appellant.¹² Counsel contends that Dr. Friedenthal indicated that appellant suffered from preexisting degenerative disc disease but pointed to no medical evidence to show that there was any testing done prior to the work injury to the low back confirming a preexisting condition. However, Drs. George, Draper and Friedenthal all agree that appellant had preexisting degenerative disease and there is no evidence to the contrary. Clearly, Dr. Friedenthal did not believe that appellant suffered from a permanent aggravation to her back as a result of the employing injury as he opined that a lumbar sprain/strain generally lasts only three or four months and that the aggravation had resolved. With regard to the MRI scan that showed disc herniation, Dr. Friedenthal specifically indicated that the disc bulge/central herniation evinced on the MRI scan was in the context of degenerative disc disease. In addition the fact that Dr. Friedenthal still noted some restrictions does not indicate that his opinion was unrationalized in that he noted that appellant still had underlying degenerative disc disease. Therefore, the Board concludes counsel's argument that Dr. Friedenthal's opinion was not entitled to the special weight accorded an impartial medical examiner.

CONCLUSION

The Board finds that OWCP properly terminated appellant's compensation effective January 17, 2008 on the grounds that her work-related injury ceased without residuals. The Board further finds that appellant did not meet her burden of proof to establish that she had any continuing residuals after January 17, 2008.

¹² *Joseph A. Brown, Jr., supra* note 8.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 21, 2010 is affirmed.

Issued: March 8, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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