

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

D.O., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Bellmawr, NJ, Employer**

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**Docket No. 11-1766
Issued: March 20, 2012**

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 26, 2011 appellant, through her attorney, filed a timely appeal from an April 25, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). 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.²

ISSUE

The issue is whether OWCP properly terminated appellant's wage-loss and medical compensation benefits effective October 20, 2010 on the grounds that her accepted thoracic sprain had ceased without residuals.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the issuance of the April 25, 2011 OWCP decision, appellant submitted new evidence. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c)(1).

On appeal, appellant's attorney contends that OWCP should have expanded the claim to include degenerative disc disease and obtained an opinion from impartial medical examiner (IME), Dr. Thomas J. O'Dowd, a Board-certified orthopedic surgeon, and second opinion physician, Dr. Robert A. Smith, a Board-certified orthopedic surgeon, as to whether appellant's work duties aggravated her degenerative disc disease. Appellant's attorney further contends that Dr. O'Dowd's January 26, 2010 report was speculative in nature and lacked probative value.

FACTUAL HISTORY

On December 5, 2006 appellant, then a 45-year-old distribution clerk and sales service associate, filed a traumatic injury claim (Form CA-1) alleging that she sustained a muscle strain in her midback as a result of repetitive lifting of bundled flats while bending over a hamper at work. OWCP accepted her claim as an occupational disease claim, as she had implicated factors of her federal employment and accepted it for thoracic sprain. It paid wage-loss compensation for total disability. Appellant worked intermittently³ and was placed on the periodic rolls in December 2009.

In a December 29, 2006 report, Dr. David C. Bauman, an attending physician Board-certified in family and geriatric medicine, indicated that appellant had been his patient since May 16, 1996. He reported that she complained of thoracic back pain for the first time on November 8, 2006, noting that she had been lifting, bending and pulling at work. An x-ray of the thoracic spine revealed some mild scoliosis and was otherwise unremarkable. Dr. Bauman recommended physical therapy and light-duty work with restrictions on lifting more than 10 pounds. He opined that, although appellant had not one traumatic injury or fall, the prolonged bending and lifting at work caused her current symptoms. Dr. Bauman indicated on January 26, 2007 that appellant continued to complain of thoracic pain and aching and was working a light-duty position with restrictions on heavy lifting, but reported lifting sometimes if she was working alone. He reported some medial rhomboid and paraspinous tenderness in the back.

In a report dated March 1, 2007, Dr. Pramod Yadhati, a Board-certified anesthesiologist, provided a history and results on examination. He reported that there was T8-T10 right greater than left paraspinous tenderness, which was exacerbated with lumbar extension and rotation. Dr. Yadhati indicated that a magnetic resonance imaging (MRI) scan of the thoracic spine dated February 13, 2007 revealed small protrusion at T8-T9, an annular fissure with no cord compression or canal compromise and partially encapsulated lipoma superficial to the spinous process in the posterior subcutaneous tissue. He diagnosed thoracic spine pain with disc protrusion and provided work restrictions.

In reports dated March 29 and April 30 2007, Dr. Bauman indicated that there was no point tenderness of pain and opined that appellant's condition was likely to be a chronic problem and that she may never be capable of activities such as heavy lifting and bending at work ever again but was able to perform light duty. Subsequent reports chronicled her progress.

³ On December 11, 2006 appellant accepted a limited-duty job offer from the employing establishment as a part-time flexible (PTF) clerk working four to six hours a day.

In a May 22, 2007 report, Dr. Yadhati diagnosed thoracic pain and radiculopathy. He reported that an MRI scan of the cervical spine dated May 17, 2007 revealed abnormality at the tip of the dense at the C1-C2 joint likely related to an arthritis process.

OWCP referred appellant for a second opinion evaluation to determine the nature and extent of her employment-related condition. In a July 28, 2009 report, Dr. Smith conducted a physical examination and reviewed a statement of accepted facts, history of the injury and the medical evidence of record. An examination of the neck and back revealed no findings of any spasm, atrophy, trigger points or deformity. Dr. Smith found the cervical and thoracolumbar range of motion to be satisfactory with no spasm or rigidity. The neurological examination was normal in the extremities with no focal motor, sensory or reflex deficit and no focal atrophy. Appellant denied any radiating pain in the anterior chest wall. Dr. Smith concluded that her accepted condition of thoracic strain had resolved as there appeared to be no clinically discernable ongoing pathology or residuals related to the condition. He opined that appellant had reached maximum medical improvement and that no treatment or follow up beyond her current home exercise program was medically necessary for the accepted condition. Dr. Smith noted that the disc abnormality discovered on the thoracic MRI scan was not an accepted condition. He opined that appellant's current home exercise program and occasional medication were related to her nonemployment disc disease which was not caused or aggravated by her federal employment.

In a November 16, 2009 report, Dr. Bauman reiterated his diagnosis of degenerative disc disease of the thoracic spine and reported abnormal tenderness in the left T8-9 area.

A November 25, 2009 MRI scan revealed a normal appearance of the thoracic spine, no evidence of disc herniation and no significant stenosis.

On December 2, 2009 appellant accepted a light-duty position offered by the employing establishment as a modified distribution/retail sales associate.

In reports dated December 16, 2009 and January 13, 2010, Dr. Bauman reiterated his diagnosis and reported tenderness in the T8 area.

On December 30, 2009 Dr. Yadhati reported that there was no pain in the thoracic spine region.

OWCP referred appellant to Dr. O'Dowd to resolve the conflict in the medical opinion evidence between Drs. Bauman and Smith on the issues of: (1) whether a causal relationship existed between her condition and the accepted employment injury; and (2) whether appellant continued to have any disability or residuals as a result of the accepted employment injury. In a January 26, 2010 report, Dr. O'Dowd reviewed a statement of accepted facts, the medical evidence of record and performed a physical examination. He reported full range of motion in appellant's neck and full range of motion of her lumbar spine with some discomfort when she flexed forward. Dr. O'Dowd indicated that she was somewhat tender to deep palpation in the mid-thoracic spine left of midline which partially reproduced her pain. The lower back was nontender. Appellant's neurological examination of both upper extremities revealed normal sensation, motor and reflex. She had a negative Tinel's sign and a negative Phalen's sign.

Dr. O'Dowd concluded that appellant had recovered from her thoracic sprain. He indicated that she had been treated for thoracic disc disease, which was likely the cause of her residual symptoms, but opined that it was not related to her federal employment. Dr. O'Dowd opined that appellant's thoracic spine pain was age related and degenerative, and repetitive lifting of weights approaching half her body weight at her age on a regular basis was probably not to be advised in any patient with her overall small size and light musculature. He opined that appellant had reached maximum medical improvement and required no further medical treatment of her thoracic spine pain as it related to the accepted thoracic sprain. Dr. O'Dowd advised that appellant was capable of full-time employment and that her medical restrictions were related to her underlying degenerative changes and not her thoracic sprain.

In reports dated February 16 to September 14, 2010, Dr. Bauman reiterated his diagnosis of degenerative disc disease of the thoracic spine and advised appellant to continue with the same work restrictions.

On July 8, 2010 appellant accepted a light-duty job offer from the employing establishment as a modified distribution/retail sales associate.

In an August 5, 2010 report, Dr. Yadhati reported mild T2-6 right greater than left paraspinous tenderness and indicated that extension of appellant's neck and lateral rotation was painful and aggravated her thoracic pain. He indicated that her work restrictions seemed to help prevent aggravation of her existing thoracic pain.

By letter dated September 13, 2010, OWCP notified appellant that it proposed to terminate her compensation benefits based on the weight of the medical evidence, as represented by Dr. O'Dowd.

In a letter dated September 28, 2010, appellant's attorney disagreed with OWCP's proposal to terminate her compensation benefits. He contended that Dr. O'Dowd's report was not sufficient to carry the weight of the medical evidence. Appellant submitted a September 30, 2010 report by Dr. Yadhati who reiterated his diagnosis and reported T5-8 paraspinous tenderness increased with extension on deep inhalation.

By decision dated October 20, 2010, OWCP terminated appellant's wage-loss and medical compensation benefits effective that day. It found the weight of the evidence was represented by Dr. O'Dowd.

In a November 22, 2010 report, Dr. Yadhati disagreed with Dr. O'Dowd's opinion that appellant's pain was related to her degenerative process in the thoracic disc and was not employment related. He stated that a degenerative disc, though stable, could be aggravated by repeated movement such as bending and lifting. Dr. Yadhati opined that appellant's degenerative disc disease was causally related to her work duties.

Appellant requested an oral hearing before an OWCP hearing representative, which was held on February 15, 2011. At the hearing, she had representation and provided testimony.

In reports dated February 2 to November 16, 2010, Dr. Bauman reiterated his diagnosis of employment-related disc disease of the thoracic spine and advised appellant to continue with the same work restrictions.

By decision dated April 25, 2011, an OWCP hearing representative affirmed the October 20, 2010 termination decision, finding that Dr. O'Dowd represented the weight of the medical evidence.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.⁴ 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.⁵ OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁷ 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.⁸

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.⁹ 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.¹⁰

ANALYSIS

OWCP accepted appellant's claim for thoracic sprain. It terminated her compensation benefits effective October 20, 2010 on the grounds that the accepted employment-related condition had resolved without residuals based on the opinion of the impartial medical examiner,

⁴ See *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁵ See *I.J.*, 59 ECAB 524 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

⁶ See *J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

⁷ See *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁸ See *James F. Weikel*, 54 ECAB 660 (2003).

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

¹⁰ See *V.G.*, 59 ECAB 635 (2008); *Sharyn D. Bannick*, 54 ECAB 537 (2003); *Gary R. Sieber*, 46 ECAB 215 (1994).

Dr. O'Dowd. The issue to be determined is whether OWCP met its burden to terminate appellant's compensation benefits.

OWCP referred appellant to Dr. O'Dowd to resolve the conflict in the medical opinion evidence between Drs. Smith and Bauman. Dr. Bauman, appellant's treating physician, opined that appellant continued to suffer from residuals from her accepted employment injury. Dr. Smith, an OWCP referral physician, disagreed with Dr. Bauman and opined that she no longer had any residuals or disability due to the accepted employment injury, concluding that her thoracic sprain had resolved. The Board notes that there was a conflict of medical opinion evidence between appellant's physician and OWCP's referral physician on the issues of medical residuals and disability. The Board finds that OWCP properly referred her to Dr. O'Dowd to resolve the conflict in the medical opinion evidence, pursuant to 5 U.S.C. § 8123(a).

The Board finds that OWCP met its burden of proof to terminate appellant's medical and wage-loss compensation benefits based on the January 26, 2010 report of Dr. O'Dowd who reviewed appellant's medical history, examined her and found no objective evidence of ongoing residuals or disability due to the accepted thoracic sprain. Dr. O'Dowd reviewed the statement of accepted facts and the medical record. He found no objective evidence of symptoms related to the thoracic sprain condition. Dr. O'Dowd found no evidence of other conditions or residuals related to appellant's employment. He explained that her medical problems and disability were not causally related to her employment but were age related and degenerative in nature. Dr. O'Dowd concluded that appellant had recovered from her thoracic sprain and advised that she was capable of full-time employment and that her medical restrictions were related to her underlying degenerative changes and not the thoracic sprain which had resolved.

The Board finds that Dr. O'Dowd's report represents the special weight of the medical evidence at the time OWCP terminated benefits and that OWCP properly relied on his report in terminating appellant's benefits. The Board finds that he had full knowledge of the relevant facts and evaluated the course of her condition. Dr. O'Dowd is a specialist in the appropriate field. His opinion is based on proper factual and medical history and his report contained a detailed summary of this history. Dr. O'Dowd addressed the medical records to make his own examination findings to reach a reasoned conclusion regarding appellant's condition.¹¹ At the time benefits were terminated, he found no basis on which to attribute any residuals or continued disability to appellant's accepted condition. Dr. O'Dowd's opinion as set forth in his January 26, 2010 report is found to be probative evidence and reliable. The Board finds that Dr. O'Dowd's opinion constitutes the special weight of the medical evidence and is sufficient to justify OWCP's termination of benefits for the accepted condition of thoracic sprain has ceased.

Although Dr. Bauman submitted reports concluding that appellant continued to suffer from chronic thoracic strain and degenerative disc disease of the thoracic spine, he did not provide a rationalized medical explanation either as to whether the conditions were employment related or why the condition was so debilitating as to preclude her from working. As

¹¹ See *Michael S. Mina*, 57 ECAB 379 (2006) (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 analysis manifested and the medical rationale expressed in support of the physician's opinion are facts, which determine the weight to be given to each individual report).

Dr. Bauman was on one side of the conflict his reports, without more by way of medical rationale, are insufficient to create a new conflict in medical opinion to overcome the special weight properly accorded to Dr. Smith.¹² Thus, the Board finds that OWCP properly terminated appellant's compensation benefits effective October 20, 2010 relating to the accepted thoracic sprain.

On November 22, 2010 Dr. Yadhati disagreed with Dr. O'Dowd's opinion that appellant's pain was related to her degenerative process in the thoracic disc, which was not employment related. He stated that a degenerative disc, though stable, could be aggravated by repeated movement such as bending and lifting. Dr. Yadhati opined that appellant's degenerative disc disease was causally related to her work duties. His November 22, 2010 report contains no opinion as to whether she continues to have residuals from the accepted condition of thoracic sprain. Thus, this report is insufficient to create a conflict or otherwise show that the termination was improper. Accordingly, the Board finds that Dr. O'Dowd's opinion continues to constitute the special weight of medical opinion and supports OWCP's April 25, 2011 decision terminating appellant's compensation for wage loss and medical benefits.

On appeal, appellant's attorney contends that Dr. O'Dowd's January 26, 2010 report was speculative in nature and lacked probative value. However, as explained, Dr. O'Dowd's report represents the weight of the medical evidence and establishes that appellant's accepted condition resolved. Further, appellant's attorney argues that OWCP should have expanded the claim to include degenerative disc disease and developed the issue as to whether appellant's work duties aggravated her degenerative disc disease. 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.¹³ There is no rationalized medical opinion which explains how particular aspects of appellant's work caused or aggravated her degenerative disc disease. Dr. O'Dowd found no basis on which to attribute any other condition to her employment. Thus, there is insufficient evidence to establish that this condition is employment related.¹⁴

CONCLUSION

The Board finds that OWCP properly terminated appellant's wage-loss and medical compensation benefits effective October 20, 2010 on the grounds that her accepted thoracic sprain had ceased.

¹² See *J.M.*, Docket No. 11-1257 (issued January 18, 2012); *Dorothy Sidwell*, 41 ECAB 857 (1990).

¹³ See *Jaja K. Asaramo*, 55 ECAB 200 (2004) (for conditions not accepted by OWCP, the claimant bears the burden of proof to establish that the condition is causally related to the employment injury through the submission of rationalized medical evidence); *Alice J. Tysinger*, 51 ECAB 638 (2000).

¹⁴ See *C.R.*, Docket No. 11-1445 (issued January 26, 2012).

ORDER

IT IS HEREBY ORDERED THAT the April 25, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 20, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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