

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

D.C., Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY,)
TRANSPORTATION SECURITY)
ADMINISTRATION, Birmingham, AL,)
Employer)

Docket No. 12-1472
Issued: November 19, 2012

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 8, 2012 appellant filed a timely appeal from an Office of Workers' Compensation Programs' (OWCP) decision dated May 11, 2012. 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.

ISSUE

The issue is whether OWCP met its burden of proof to terminate appellant's compensation benefits.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On May 8, 2006 appellant, a 53-year-old transportation security screener, injured her lower back while lifting luggage from a conveyor belt. She filed a claim for benefits on May 9, 2006, which OWCP accepted for a lumbar sprain.

Appellant underwent a magnetic resonance imaging (MRI) scan on July 24, 2006. It showed degenerative disc changes and disc desiccation at L4-5 with posterior annular tear and generalized annular bulge extending into caudal neural foramina, bilaterally. The MRI scan also showed mild lateral recess narrowing, mild facet degenerative changes and a small posterior annular disc tear.

In a September 27, 2006 work capacity form report, Dr. Matthew D. Burke, Board-certified in pain medicine and a treating physician, found that appellant could do light work. He recommended work restrictions of no lifting exceeding 20 pounds and alternating sitting and standing for three hours.

In a report dated September 27, 2006, Dr. Burke advised that appellant was at a postwork injury status for a lumbar sprain. Appellant had underlying lumbar degenerative disc disease and facet arthropathy with some lateral recess stenosis at L4-5. Dr. Burke opined that ultimately her lumbar sprain injury was recovering and that her residual pain would be related to lumbar degenerative changes. He advised that appellant was currently on light duty, alternating between sitting and standing as necessary. Dr. Burke noted that he would see her again in two or three weeks, at which time he would determine whether she was at maximum medical improvement and ready for full duty.

Appellant underwent a functional capacity evaluation on January 19, 2007. The results of this study found that she was able to lift 54 pounds and could engage in both material and nonmaterial handling tasks required by her current job as a security scanner without restrictions, so long as she was allowed rest periods.

In a report dated January 31, 2007, Dr. Burke addressed the results of the functional capacity test. He stated that appellant was capable of lifting 54 pounds and demonstrated a 100 percent capacity for both material and nonmaterial handling checks at the required levels for her current employment. Appellant could do constant standing and walking, frequent sitting, stooping, bending and twisting, squatting, reaching horizontal and grasping and fine manipulation. Dr. Burke advised that she could do frequent lifting from the floor to the waist within the accepted range of 54 pounds, as well as carrying. He found that the restrictions set forth in the functional capacity test constituted appellant's actual restrictions and that she had reached maximum medical improvement.

In a December 20, 2011 report, Dr. Burke stated that appellant continued to have chronic lower back pain stemming from her May 2006 employment injury. Appellant's condition had stabilized, with some facet arthritis and lateral recess stenosis; she experienced more pain while standing and bending but was able to tolerate it. Dr. Burke reiterated that she had permanent restrictions of no lifting greater than 54 pounds, as indicated by her January 2007 functional

capacity test. Appellant should be restricted from limiting inclines, not exceeding two hours a shift and prolonged standing on concrete floors for more than two hours per day.

In order to determine appellant's current condition and whether she had residuals from her accepted conditions, OWCP referred her for a second opinion examination by Dr. Tai Q. Chung, Board-certified in orthopedic surgery. In a March 8, 2012 report, Dr. Chung reviewed the medical history and the statement of accepted facts and listed findings on examination. He stated that appellant was experiencing intermittent pain in her lower back with no radiation down her legs and no numbness or weakness in the feet. Dr. Chung advised that she had been treated conservatively with medicine and physical therapy and that her pain had greatly subsided. He noted that appellant had been able to continue her job as a security screener.

Dr. Chung opined that the conditions noted by the July 2006 MRI scan of degenerative disc disease at L4-5, disc desiccation, facet arthropathy and lateral recess narrowing, were conditions which preexisted appellant's May 8, 2006 work injury. He stated that the straining accident on May 8, 2006 did not lead to the development of these underlying conditions, which were natural, progressive and degenerative and were not aggravated, exacerbated or worsened by the May 8, 2006 work injury. Dr. Chung opined that the lifting event did not cause the underlying condition to progress any further than it otherwise would have.

Dr. Chung concluded that there were no residuals from appellant's accepted lumbar strain, which had resolved. There was no change in appellant's work requirements as a result of the lumbar strain. Dr. Chung opined that her 54-pound lifting restriction was based on subjective symptoms and as a precautionary measure and was not supported by his own objective findings.

On March 10, 2012 OWCP issued a notice of proposed termination of compensation. It found that the weight of the medical evidence, as represented by the opinion of Dr. Chung, established that appellant's accepted, employment-related lumbar sprain had resolved and that she had no residuals from the May 8, 2006 injury. OWCP allowed appellant 30 days to submit additional evidence or legal argument in opposition to the proposed termination.

In a report dated April 17, 2012, Dr. Burke reiterated his findings and conclusions. He disagreed with Dr. Chung's opinion that appellant had no significant restrictions and restated his opinion that she should be restricted from lifting more than 54 pounds, walking on inclines limited to two hours per shift and avoiding prolonged standing on unpadded concrete floors for more than two hours per day. Dr. Burke stated, however, that these restrictions were on the basis of her underlying degenerative changes. He noted that appellant currently had complaints of persistent low back pain that was intermittent depending on her activity level. While Dr. Burke noted a small annular tear on the initial MRI scan he advised her that this was part of a degenerative process and was not "something surgical." He indicated that he was unable to find that appellant's injury specifically caused this tear as it could have been preexisting with her arthritic changes, although it was entirely possible that the injury could lead to an exacerbation of the underlying degenerative changes. Dr. Burke advised that this exacerbation, had it occurred, would have lasted six months. He reiterated that appellant was left with pain related to the degenerative changes.

In a letter dated April 20, 2012, appellant asserted that her current lower back pain was caused by the May 8, 2006 lifting incident, in addition to years of walking up and down the incline at her worksite and standing on a concrete floor. She objected to the fact that the incline at the worksite was not mentioned by Dr. Chung, contending that it caused symptoms in her lower back as it required her to engage in demanding activities such as pushing wheelchair-bound individuals up the incline. Appellant also disagreed with Dr. Chung's finding that she no longer had any work restrictions.

By decision dated May 11, 2012, OWCP terminated appellant's compensation, finding that Dr. Chung's opinion represented the weight of the medical evidence. It stated that Dr. Burke's April 17, 2012 report appeared to imply that appellant's accepted lumbar sprain condition had resolved because he stated that, while her May 8, 2006 injury might have aggravated a preexisting degenerative condition, any such aggravation would have only lasted six months. OWCP further noted that Dr. Burke stated that her current work restrictions were based on her underlying degenerative changes and not the accepted lumbar sprain.

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 Following a proper termination of compensation benefits, the burden of proof shifts back to the claimant to establish continuing employment-related disability.³

ANALYSIS

OWCP based its decision to terminate appellant's compensation on the opinion of Dr. Chung, a referral physician. In his March 8, 2012 report, Dr. Chung stated that she had no residuals from her accepted lumbar strain condition, which had resolved and that there was no change in her work requirements as a result of the lumbar strain. He advised that, while appellant still had intermittent pain in her lower back, her pain had substantially diminished and she was able to continue her job as a security screener. Dr. Chung asserted that the conditions indicated by her July 2006 MRI scan, *i.e.*, degenerative disc disease L4-5, disc desiccation, facet arthropathy and lateral recess narrowing, were conditions which preexisted her May 8, 2006 work injury and were not aggravated by the injury. He also opined that her 54-pound lifting restriction was based on subjective symptoms and as a precautionary measure and was not supported by his own objective findings.

The Board finds that Dr. Chung's opinion represents the weight of the medical evidence and negates a causal relationship between appellant's current condition and her accepted lumbar sprain. Dr. Chung's report is sufficiently probative and rationalized. Appellant's treating physician, Dr. Burke, indicated in his April 17, 2012 report that her restrictions of no lifting exceeding 54 pounds, no walking on inclines for more than two hours per shift, and avoiding prolonged standing on unpadded concrete floors for more than two hours should be continued.

² *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

³ *John F. Glynn*, 53 ECAB 562 (2002).

He stated, however, that her current work restrictions were based on underlying degenerative changes, not the accepted lumbar sprain condition. In addition, while Dr. Burke stated that the May 8, 2006 lumbar sprain injury might have aggravated a preexisting degenerative condition, he advised that any such aggravation would have only lasted six months. He did not provide an opinion as to whether appellant had any residuals from her May 8, 2006 employment injury. OWCP therefore properly found that Dr. Chung's opinion represented the weight of the medical evidence in its May 11, 2012 termination decision. The Board will affirm the May 11, 2012 OWCP decision.

CONCLUSION

Under the circumstances described above, the Board finds that OWCP met its burden of proof to terminate appellant's compensation benefits.

ORDER

IT IS HEREBY ORDERED THAT the May 11, 2012 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: November 19, 2012
Washington, DC

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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

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