

cervical conditions were causally related to her accepted lumbar sprain. The facts and history contained in the prior appeal are incorporated by reference.

New evidence submitted to the record since the prior Board decision includes an August 12, 2010 duty status report from Dr. Plas T. James, a Board-certified orthopedic surgeon, who referenced a recent functional capacity examination and set forth appellant's work restrictions.

On January 24, 2011 appellant filed a Form CA-7 claim for compensation for the period December 18, 2010 to January 14, 2011. She indicated that she was sent home because there was no light-duty work available under the National Reassessment Program (NRP).³

On January 21, 2011 OWCP referred appellant along with a statement of accepted facts, a set of questions and the medical record for a second opinion examination with Dr. Alexander Doman, a Board-certified orthopedic surgeon, to determine the extent and degree of remaining injury-related disability.

By letter dated January 27, 2011, OWCP advised appellant that additional evidence was needed regarding her claim for compensation from December 18, 2010 to January 14, 2011.⁴ It explained that a physician's opinion was crucial to her claim. By letter dated February 4, 2011, OWCP again informed appellant of the type of evidence needed to support her claim for compensation.

In a February 25, 2011 report, Dr. Doman the second opinion physician, noted appellant's history of injury and treatment. He examined appellant and determined that she was in no acute distress and had "obvious signs of symptom exaggeration on a completely nonorganic basis with the complaints of severe back pain with simple attempts to flex the right knee while in the prone position." Dr. Doman determined that she had tenderness over the subcutaneous tissue of the lumbar spine and that the deep tendon reflexes in the arms and legs were normal. He also determined that there were no signs of muscular atrophy and a negative straight leg raising test. Dr. Doman explained that x-rays of the lumbar spine were normal except for a minor congenital sacralization of the L5 vertebra. Regarding the work-related lumbar sprain, he opined that it had fully and completely resolved. Dr. Doman explained that there were no objective findings in support of any ongoing residuals of the lumbar strain. He referred to a magnetic resonance imaging (MRI) scan from September 8, 2009 and advised that it revealed no objective findings of any neurologic defects or other findings in support of her subjective complaints of low back pain. Dr. Doman indicated that the injury of July 9, 2009 had fully resolved. He further explained that it was his "firm and definite opinion" that appellant's subjective complaints of back pain were "grossly exaggerated and in fact suggestive of a patient

³ On February 3, 2011 appellant filed a CA-7 form claim for compensation for the period January 15 to 28, 2011.

⁴ OWCP explained that the medical evidence did not substantiate that the disability was caused by the work injury because appellant's case was accepted for a lumbar sprain, which typically lasted four to six weeks. It advised her that the most current medical evidence in her file was dated September 23, 2010 which indicated that her current disability was caused by lumbar facet arthropathy at the L3 through S1 level. Appellant was advised that a formal decision was issued on September 1, 2009, which found that the condition was not accepted as work related in this case.

who is malingering.” Dr. Doman stated that she had not provided a concerted effort during all phases of her evaluation. No work restrictions were imposed. Dr. Doman opined that appellant reached maximum medical improvement and was able to perform full-time regular duty without restrictions.

OWCP received a copy of an offer of modified assignment of four and a half hours per day for a mail carrier dated December 18, 2010 from the employing establishment. A statement was also received from Michelle Cooper, a supervisor of distribution operations dated February 3, 2011. She indicated that she interviewed appellant under NRP on December 18, 2010. Ms. Cooper explained that appellant refused the modification and would not sign it because she could do the work. She noted that appellant indicated additional medical evidence would be provided; however, none was received.

In a letter dated February 28, 2011, appellant responded to OWCP’s January 27 and February 4, 2011 requests for information. She explained that she was not out of work because of her physician. Appellant indicated that she was out of work because the employing establishment sent her home on December 18, 2010 pursuant to NRP as it could not accommodate her restrictions. She requested that OWCP reconsider paying her claim. Appellant indicated that she had the same limitations since July 9, 2009.

In a March 3, 2011 report, Dr. James diagnosed L3-S1 facet arthropathy and recommended a myelogram and computerized tomography scan of the lumbar spine.

By separate decisions dated March 7, 2011, OWCP denied appellant’s claim for compensation for the periods December 18, 2010 to January 14, 2011 and from January 15 to 28, 2011.

On March 7, 2011 OWCP issued a notice of proposed termination of compensation. It proposed to terminate appellant’s compensation based on the report of Dr. Doman which established that the residuals of the work injury of July 9, 2009 had ceased.

Appellant’s representative requested a telephonic hearing which was held on June 7, 2011.

OWCP received several reports from Dr. James who treated appellant for L3-S1 facet arthropathy. The most recent report was dated March 31, 2011.

In an April 11, 2011 decision, OWCP terminated appellant’s compensation benefits effective that date finding that she had no continuing residuals of her employment injury.⁵

On April 20, 2011 appellant’s representative requested a telephonic hearing of the April 11, 2011 decision. The hearing was held on June 7, 2011. During the hearing appellant’s representative indicated that they were claiming disability compensation from December 18, 2010 through April 11, 2011, the date of termination, based on the employing establishment’s

⁵ OWCP indicated that Dr. Plas addressed a condition which was denied on September 1, 2009 as not being causally related to appellant’s work injury.

withdrawal of the limited-duty position. They were not claiming that appellant was totally disabled only that the employer failed to accommodate appellant's restrictions and that she continued to have restrictions as a result of the accepted injury.

By decision dated August 23, 2011, an OWCP hearing representative affirmed the March 7 and April 11, 2011 decisions. She found that Dr. Doman was the weight of the medical evidence and OWCP met its burden of proof in finding that appellant no longer had residuals of her lumbar sprain. The hearing representative also found that the medical evidence did not support continued restrictions causally related to the accepted employment injury.

LEGAL PRECEDENT -- ISSUE 1

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.⁶ Disability means the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury. It may be partial or total.⁷

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to her work-related injury or illness is withdrawn, except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force.⁸

FECA Bulletin No. 09-05 outlines procedures when light-duty positions are withdrawn under NRP. If the claimant has been on light duty due to an injury-related condition without an LWEC rating, or OWCP has set aside the LWEC rating, payment for total wage loss should be made based on the CA-7 form as long as the following criteria are met: (1) the current medical evidence in the file (within the last six months) establishes that the injury-related residuals continue; (2) the evidence of file supports that light duty is no longer available; and (3) there is no indication that a retroactive LWEC determination should be made. Retroactive LWEC determinations should not be made in NRP cases without approval from the district Director. FECA Bulletin No. 09-05 states that, if the medical evidence is not sufficient, OWCP should request current medical evidence from the employing establishment and the claimant.⁹

ANALYSIS -- ISSUE 1

The record indicates that the employing establishment withdrew appellant's light-duty position pursuant to NRP from December 18, 2010 to April 11, 2011. Appellant claimed wage-

⁶ 5 U.S.C. § 8102(a).

⁷ 20 C.F.R. § 10.5(f).

⁸ *Id.* at § 10.5(x).

⁹ FECA Bulletin No. 09-05 (issued August 18, 2009). See *M.B.*, Docket No. 12-435 (issued July 3, 2012).

loss compensation for the period December 18, 2010 through April 11, 2011 alleging that, under NRP, the employing establishment could not accommodate her work restrictions. The employing establishment provided a statement from Ms. Cooper, who noted that appellant refused to sign the modified offer under NRP.

Generally, a withdrawal of a light-duty position is considered a recurrence of disability under OWCP's regulations. As there is no LWEC in place, OWCP should consider whether the medical evidence established that appellant had continuing injury-related residuals at the time of the withdrawal.¹⁰ As noted above, FECA Bulletin No. 09-05 was issued specifically to provide guidance when a claimant is sent home through NRP because light duty is no longer available. The March 7 and August 23, 2011 decisions denying the claim for compensation do not refer to FECA Bulletin No. 09-05 or attempt to follow its provisions. The case will therefore be remanded to OWCP for a proper decision in accord with the established guidance. After such further development as OWCP deems necessary, it shall issue a *de novo* decision on appellant's entitlement to wage-loss compensation from December 18, 2010 through April 11, 2011.

LEGAL PRECEDENT -- ISSUE 2

Once OWCP accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.¹¹ 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.¹² The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.¹³ 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.¹⁴

In assessing medical evidence, the weight of such evidence is determined by its reliability, its probative value and its convincing quality. 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 the analysis manifested and the medical rationale expressed in support of the physician's opinion are facts which determine the weight to be given each individual report.¹⁵

¹⁰ See *M.B.*, *id.*

¹¹ *Curtis Hall*, 45 ECAB 316 (1994).

¹² *Jason C. Armstrong*, 40 ECAB 907 (1989).

¹³ *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

¹⁴ *Calvin S. Mays*, 39 ECAB 993 (1988).

¹⁵ See *Connie Johns*, 44 ECAB 560 (1993).

ANALYSIS -- ISSUE 2

OWCP accepted that appellant sustained a lumbar sprain. It subsequently referred her to Dr. Doman for a second opinion regarding the nature and extent of her work-related condition.

The Board finds, at the time that OWCP terminated appellant's medical benefits, the weight of the medical evidence rested with Dr. Doman, who submitted a thorough medical opinion based upon a complete and accurate factual and medical history. In his February 25, 2011 report, Dr. Doman noted her history of injury and treatment. He performed a complete examination, reviewed the record. Dr. Doman explained that the lumbar sprain had fully resolved. He opined that appellant sought to deceive him as she had "complaints of severe back pain on a completely nonphysiologic basis during the examination with simple attempts to flex her knee in a prone position." Dr. Doman opined that she had no continued disability from her accepted employment injuries and that she was capable of performing her usual employment and that further medical treatment was unnecessary. He found no objective basis to support continuation of the accepted lumbar sprain.

The only condition accepted by OWCP was a lumbar strain. Appellant provided medical reports from Dr. James, who treated her for L3-S1 facet arthropathy. The Board notes that this was not an accepted condition and was previously denied by OWCP on September 1, 2009.¹⁶ Dr. James did not offer an opinion to explain how this was related to the accepted injury or why appellant continued to suffer an ongoing condition and disability causally related to the accepted lumbar sprain. Consequently, it is of limited probative value.

Because Dr. Doman provided the only rationalized medical opinion of record addressing whether appellant continued to have residuals of her accepted lumbar sprain, his opinion constitutes the weight of the medical evidence.

The Board finds that Dr. Doman's report established that appellant ceased to have any disability or condition causally related to her employment injuries, thereby justifying OWCP's April 11, 2011 termination of compensation benefits.

Appellant may submit evidence or argument with a written request for reconsideration 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 the case is not in posture for a decision regarding OWCP's denial of appellant's claim for compensation for disability for the period December 18, 2010 through April 11, 2011. The Board further finds that OWCP properly terminated appellant's compensation benefits effective April 11, 2011 for her accepted lumbar sprain.

¹⁶ Appellant did not appeal the September 1, 2009 decision.

ORDER

IT IS HEREBY ORDERED THAT the August 23, 2011 the Office of Workers' Compensation Programs' decision is affirmed in part and set aside and remanded for further action in part.

Issued: September 13, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees;' Compensation Appeals Board

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