

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

L.C., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Pittsburgh, PA, Employer**

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**Docket No. 12-1177
Issued: August 19, 2013**

Appearances:
Douglas Sughrue, Esq., for the appellant
Office of Solicitor, for the Director

Oral Argument April 9, 2013

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On May 7, 2012 appellant, through her attorney, filed a timely appeal from a March 21, 2012 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 the case.

ISSUES

The issues are: (1) whether OWCP met its burden of proof to justify termination of appellant's compensation benefits for her accepted injury effective April 17, 2009; and (2) whether appellant established that she had any continuing disability or residuals relating to her accepted conditions after April 17, 2009.

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On June 4, 2007 appellant, then a 46-year-old mail handler, was injured when she slipped and fell on an oil spill while working. OWCP accepted her claim for a neck sprain, a lumbar sprain and right shoulder contusion. Appellant returned to a limited-duty position and stopped work completely on August 17, 2007.

Appellant had a lumbar spine magnetic resonance imaging (MRI) scan on June 12, 2007 which revealed small midline annular tears at L4-5, L5-S1. She was treated by Dr. Paul S. Lieber, a Board-certified orthopedist, from August 3, 2007 to February 25, 2008, for a lumbar strain sustained in a work-related fall. Dr. Lieber diagnosed right shoulder supraspinatus tendinitis secondary to right shoulder strain/sprain, right quadriceps and hip flexor weakness of unclear etiology and thoracic strain/sprain. In reports dated September 6, 2007 to February 25, 2008, he diagnosed probable lumbar radiculopathy secondary to annular tears at L4-5 and L5-S1 discs. Dr. Lieber recommended L5-S1 epidural injections and opined that appellant remained totally disabled from work. An electromyogram (EMG) dated December 28, 2007 revealed chronic L5 radiculopathy.

On March 14, 2008 OWCP referred appellant to Dr. Daniel Altman, a Board-certified orthopedist, for a second opinion. In an April 15, 2008 report, Dr. Altman noted the examination revealed unusual gait, good range of motion of the neck, full range of motion of the spine and right shoulder without weakness, no significant focal motor weakness of the lower extremities, no motor or sensory deficits and reflexes were symmetrical. He noted that appellant's neck and right shoulder strain were resolved. Dr. Altman noted that the MRI scan of the lumbar spine was unremarkable for any nerve root or canal compromise but noted mention of an annular tear which was normal in a person of appellant's age. He noted appellant's complaints of right leg pain and abnormal gait. Dr. Altman stated that initial EMG studies were normal but a more recent one by Dr. Lieber showed L5 radiculopathy. He stated that the etiology of the radiculopathy was uncertain as there were no motor or sensory deficits on examination and the MRI scan revealed no significant nerve root compromise. Dr. Altman diagnosed lumbar strain with possible right leg radiculopathy and resolved cervical and right shoulder strain. He opined that appellant should have reached maximum medical improvement 9 to 12 months after the original injury. Due to her abnormal gait, Dr. Altman recommended evaluation by a neurologist. In a work capacity evaluation, he advised that appellant could return to work full time with restrictions.

Appellant submitted a March 24, 2008 report from Dr. Lieber who diagnosed lumbar strain/sprain, right L5 radiculopathy and degenerative disc disease. Dr. Lieber opined that appellant was disabled from work. In reports dated April 24 and 28, 2008, he opined that her disc injuries, at L4-5 and L5-S1 with midline disc herniations, right L5 radiculopathy, lumbar sprain, were caused by the June 4, 2007 work injury. Dr. Lieber noted that appellant was not capable of resuming her preinjury employment. Other reports from him dated August 14 to November 21, 2008, noted that no changes in appellant's condition and continued to find that she was disabled. An August 8, 2008 CT scan of the lumbar spine revealed mild degenerative changes at C3-4, C4-5, C5-S1 and L5-S1.

On November 13, 2008 OWCP referred appellant to Dr. John F. Delaney, Jr., a Board-certified neurologist. In a December 1, 2008 report, Dr. Delaney noted appellant's history and findings on examination. He stated that she was obese with antalgic gait that was clearly histrionic. Examination of the upper neck and back were normal. There was full range of motion of the neck, no evidence of spasm, positive straight leg raising on the right, decreased reflexes at the knee and ankle and decreased pinprick sensation at L4-5. Dr. Delaney noted that the August 8, 2008 CT scan of the spine revealed mild degenerative changes. He diagnosed mild postconcussion syndrome as a result of the June 4, 2007 accident, chronic lumbar radiculopathy secondary to stretch injury at L4-5 and possible discogenic disease with nerve root impingement at L4-5 and L5-S1 root. Dr. Delaney indicated that EMG's and nerve conduction velocities were equivocal with no evidence of impingement but recommended an updated EMG and a myelogram to examine nerve root impingement.

On January 26, 2009 OWCP referred appellant to Dr. Frank Artuso, a Board-certified physiatrist, for EMG and nerve conduction studies. In a February 20, 2009 report, Dr. Artuso noted a normal electrical study of the right lower extremity with no evidence of peripheral neuropathy or lumbar motor radiculopathy. A lumbar myelogram dated January 27, 2009 revealed no evidence of focal disc herniation, nerve root compression or spinal stenosis, with a mild diffuse annular bulge encroaching on the neural foramen at L4-5.

In a supplemental report dated February 16, 2009, Dr. Delaney noted reviewing the January 21, 2009 EMG and myelogram of January 27, 2009. The EMG revealed no abnormalities and the postmyelogram lumbar CT scan showed evidence of L4-5 annular bulge mildly encroaching on the neural foramen without root compression. Dr. Delaney noted that none of the findings explain appellant's pain situation. He indicated that his original report noted evidence of L5 radiculopathy; however, the EMG and nerve conduction tests did not support this finding, rather the findings suggest no pathology. In a February 16, 2009 work capacity evaluation, Dr. Delaney opined that appellant reached maximum medical improvement and could return to work full time without restrictions.

On February 24, 2009 OWCP requested a supplemental report from Dr. Delaney and asked that he address whether appellant had residuals of the work injury and whether she was totally disabled due to the effects of the June 4, 2007 work injury from August 3, 2007 to October 17, 2008. In a March 2, 2009 report, Dr. Delaney opined that the EMG revealed no abnormalities and therefore he opined that appellant did not have residuals of the June 4, 2007 work injury. He further opined that she was not totally disabled from the work injury based on the initial medical evidence and supplemental diagnostic studies.

Appellant submitted reports dated December 23, 2008 and February 5, 2009 from Dr. Lieber who diagnosed nonsteroid anti-inflammatory-related gastritis secondary to medication, diagnosed lumbosacral strain and internal disc disruption at L4-5 with right L5 radiculopathy and noted that appellant was disabled from work.

On March 12, 2009 OWCP issued a notice of proposed termination of compensation and medical benefits based on the reports of Dr. Delaney and Dr. Altman.

Appellant submitted a March 10, 2009 report from Dr. Lieber who noted appellant's complaints of worsening back and leg pain. Dr. Lieber noted bizarre antalgic gait with gluteus medius weakness. He diagnosed lumbosacral strain/sprain and internal disc disruption, L4-5 disc with right L5 radiculopathy and advised that appellant would remain off work.

In an April 17, 2009 decision, OWCP terminated appellant's compensation and medical benefits effective the same day, finding that Drs. Altman and Delaney represented the weight of the medical evidence and established that appellant had no continuing residuals of her accepted injuries.

Appellant submitted an August 8, 2008 CT scan which revealed degenerative changes at C3-4, C4-5 and C5-S1 and L5-S1, and L4-5. Also submitted were reports from Dr. Lieber, dated April 10 and May 11, 2009, who diagnosed low back pain due to internal disc disruption, L4-5, L5 radiculopathy and neck pain. He opined that appellant was disabled from work. On May 26, 2009 Dr. Lieber noted findings of gluteus medius gait pattern with weakness and opined that she was totally disabled. He opined that appellant's current condition was causally related to the work injury of June 4, 2007 and he did not anticipate improvement in her condition without additional treatment. On August 12, 2009 appellant was seen by Dr. Michael Casey, a Board-certified orthopedist, for buttock symptoms and abnormal gait. Dr. Casey advised that her 2007 pelvic MRI scan did not show a fracture and he advised that any findings of a fracture were not related to a work injury two or three years prior.

Appellant appealed her claim to the Board and in a February 23, 2010 order, the Board remanded the case to OWCP. The Board determined that OWCP, in its April 17, 2009 decision, had not reviewed a March 10, 2009 report from Dr. Lieber which had been received by OWCP prior to its decision.² In a March 12, 2010 decision, OWCP noted reviewing the March 10, 2009 report from Dr. Lieber and denied modification of the April 17, 2009 decision.

Appellant requested reconsideration and submitted reports from Dr. Lieber, dated June 2 to November 4, 2009, who diagnosed sacral fracture, lumbosacral strain/sprain and medication management. Dr. Lieber noted that she was not currently working. In reports dated January 25 to February 24, 2010, he noted that appellant underwent a nerve block on January 14, 2010 with some success and diagnosed lumbosacral strain/sprain with sacral fracture and sacroiliac joint dysfunction. Dr. Lieber noted that she remained off work. Also submitted was a July 6, 2010 report from Dr. Robert Baraff, a Board-certified neurologist, who evaluated appellant from May to September 2009 for low back and neck pain since a June 4, 2007 slip and fall injury at work. Dr. Baraff diagnosed lumbosacral strain with radiculopathy, cervical strain and radiculopathy and sacral fracture, all caused by her June 4, 2007 work injury. He opined that appellant's slip and fall injury of June 4, 2007 caused her lumbar and cervical injuries with radicular symptoms and sacral fracture.

In a decision dated December 23, 2010, OWCP denied modification of the prior decision.

On December 16, 2011 appellant requested reconsideration. She submitted a December 1, 2009 report from Dr. Lieber who treated her for right heel and posterior leg pain.

² Docket No. 09-1417 (issued February 23, 2010).

Dr. Lieber diagnosed lumbar strain/sprain with sacral fracture at S3 and recommended a block at L5. In a December 5, 2011 report, he sought to explain how appellant's slip and fall injury on June 4, 2007 could cause a sacral fracture. Appellant reported that her legs slipped out in front of her and she landed on her right buttock. Dr. Lieber noted that the force of the magnitude sustained in that fall "could have certainly caused a fracture" of her sacral bone, as she would have landed on her sacrum and coccyx fracturing her sacral bone.

In a decision dated March 21, 2012, OWCP denied modification of the prior decision.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation benefits.³ 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.⁴ 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, which requires further medical treatment.⁵

ANALYSIS -- ISSUE 1

OWCP accepted appellant's claim for a work-related neck, back and lumbar sprain and contusion of the right shoulder region. Appellant returned to a limited-duty position after the injury and stopped work completely on August 17, 2007. OWCP then referred her for a second opinion evaluation by Dr. Altman, an orthopedist, and Dr. Delaney, a neurologist.

The Board finds that the reports of Drs. Altman and Delaney represent the weight of the medical evidence and that OWCP properly relied on their reports in terminating appellant's compensation and medical benefits. Drs. Altman and Delaney's opinions are based on proper factual and medical history as they reviewed a statement of accepted facts and appellant's prior medical treatment and test results. They related their comprehensive examination findings in support of their opinions. Drs. Altman and Delaney found no objective basis for residuals from the conditions of neck sprain, lumbar sprain and right shoulder contusion. They indicated that appellant's current condition was due to her preexisting degenerative conditions. Thus, OWCP met its burden of proof to terminate appellant's compensation benefits.

Appellant submitted reports from Dr. Lieber, dated April 24 and 28, 2008, who opined that appellant's disc injuries at L4-5 and L5-S1 with midline disc herniations, right L5 radiculopathy, lumbar sprain were all caused by the June 4, 2007 work injury. Dr. Lieber opined that she was not capable of resuming her preinjury work. However, these reports did not specifically provide any medical reasoning explaining how any continuing condition was

³ *Gewin C. Hawkins*, 52 ECAB 242 (2001); *Alice J. Tysinger*, 51 ECAB 638 (2000).

⁴ *Mary A. Lowe*, 52 ECAB 223 (2001).

⁵ *Id.*; *Leonard M. Burger*, 51 ECAB 369 (2000).

causally related to the June 4, 2007 work injury, accepted for a neck, back and lumbar sprain and right shoulder contusion, and why they would not be related to appellant's diagnosed obesity and age-related degenerative disc disease. Therefore these reports are of limited probative value.⁶ Other reports from Dr. Lieber from March 24, 2008 to March 10, 2009 noted diagnoses and appellant's disability from work. However, Dr. Lieber did not address whether any continuing residuals or disability was causally related to the accepted injury.⁷ Likewise, various reports of diagnostic testing did not provide an opinion on whether appellant had continuing residuals causally related to the accepted injury. Appellant submitted no other current medical evidence supporting that her work-related conditions had not resolved. The Board finds that OWCP met its burden to terminate her medical and wage-loss compensation benefits.

LEGAL PRECEDENT -- ISSUE 2

As OWCP met its burden of proof to terminate appellant's compensation benefits, the burden shifted to appellant to establish that she had continuing disability causally related to her accepted employment injury.⁸ To establish causal relationship between the claimed disability and the employment injury, appellant must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship.⁹

ANALYSIS -- ISSUE 2

The Board finds that appellant has not established that she has any continuing residuals of her work-related neck, back and lumbar sprain and contusion of the right shoulder region, on or after April 17, 2009.

After the termination of benefits on April 17, 2009 appellant submitted a May 26, 2009 report from Dr. Lieber, who opined that appellant's current condition was causally related to the work injury of June 4, 2007 and that she was totally disabled. However, Dr. Lieber provided only a conclusory statement on causal relationship without providing medical reasoning or rationale to support his opinion. The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.¹⁰ In a December 5, 2011 report, Dr. Lieber opined that the force of the magnitude sustained in the June 4, 2007 fall "could have certainly caused a fracture" of her sacral bone. The Board notes that OWCP never accepted that appellant sustained a fracture of her sacral bone as a result of her June 4, 2007 work injury and there is insufficient medical evidence to support such a conclusion.¹¹ Additionally, Dr. Lieber's

⁶ *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

⁷ *See S.E.*, Docket No. 08-2214 (issued May 6, 2009) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

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

⁹ *Daniel F. O'Donnell, Jr.*, 54 ECAB 456 (2003).

¹⁰ *See Theron J. Barham*, 34 ECAB 1070 (1983).

¹¹ *See Alice J. Tysinger*, 51 ECAB 638 (2000) (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, not OWCP's burden to disprove such relationship).

report provides only speculative support for causal relationship as the physician qualifies his support by noting that appellant's fall "could have" caused her sacral fracture condition. He provided no medical reasoning to support his opinion on causal relationship. Therefore, this report is insufficient to meet appellant's burden of proof.¹² Other reports from Dr. Lieber note appellant's status but did not provide a specific opinion, supported by medical reasoning, to explain how any continuing residual condition was causally related to the June 4, 2007 work injury. The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.¹³ Thus, these reports are insufficient to establish appellant's claim.

In a July 6, 2010 report, Dr. Baraff diagnosed lumbosacral strain with radiculopathy, cervical strain and radiculopathy and sacral fracture, and opined that all the conditions were caused by her work injury of June 4, 2007. However, Dr. Baraff's opinion is insufficient to establish a continuing work-related condition as he provided only a conclusory statement on causal relationship without any medical reasoning or rationale to explain the basis of his conclusion. In an August 12, 2009 report, Dr. Casey advised that any findings of a fracture were not related to a work injury two years prior. This report contradicts Dr. Lieber's report that any fracture was work related. He did not specifically address whether appellant continued to have residuals of her accepted conditions.

None of the reports submitted by appellant after the termination of benefits included a rationalized opinion regarding the causal relationship between her current condition and her accepted work-related conditions. Consequently, she did not establish that she had any employment related condition or disability after April 17, 2009.

On appeal, appellant, by her attorney, submitted a brief which summarized appellant's medical treatment from June 4, 2007 to December 5, 2011. Appellant asserted in the brief and at oral argument before the Board that she submitted sufficient medical evidence supporting that she sustained a disabling sacral fracture causally related to the June 4, 2007 work injury. She asserts that the sacral fracture was not discovered contemporaneous with the work injury in 2007 because of poor diagnostic imaging. As explained, OWCP accepted that appellant sustained a neck and lumbar sprain and contusion of the right shoulder region as a result of the June 4, 2007 work injury. It never accepted that she sustained a fracture of her sacral bone as a result of her June 4, 2007 work injury and this issue is not before the Board at this time. The issue before the Board is whether OWCP met its burden of proof to justify termination of appellant's compensation benefits for her accepted injuries of neck, back and lumbar sprain and contusion of the right shoulder region, effective April 17, 2009 and whether she had continuing residuals after this date. Appellant further asserts that OWCP did not meet its burden of proof to terminate benefits and contends that Dr. Lieber and Dr. Baraff, as treating physicians, have superior knowledge of her condition that a second opinion physician would not possess and therefore their opinions are the weight of the evidence. She further asserts that the reports of the second opinion physicians, Drs. Delaney and Altman, are not rationalized and should not be the weight

¹² Medical opinions that are speculative or equivocal in character are of diminished probative value. *D.D.*, 57 ECAB 734 (2006).

¹³ See *Theron J. Barham*, 34 ECAB 1070 (1983).

of the evidence. As explained, the opinions of Drs. Altman and Delaney represent the weight of the medical evidence and that OWCP properly relied on their reports in terminating appellant's compensation benefits. The Board notes that the various reports from Dr. Lieber and Dr. Baraff failed to provide unequivocal medical reasoning explaining how any continuing residuals were causally related to the accepted June 4, 2007 work injury.

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 has met its burden of proof to terminate benefits effective April 17, 2009 and that appellant failed to establish that she had any continuing disability due to her accepted condition after April 17, 2009.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 21, 2012 is affirmed.

Issued: August 19, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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