

and lumbar strains, left knee and ankle contusions, left sciatica and herniated disc at L4-5. Appellant returned to work intermittently until May 18, 2011, when she stopped work due to her accepted conditions.

In order to determine appellant's current condition and whether she still had residuals from her accepted conditions, OWCP referred her for a second opinion examination by Dr. Manhal Ghanma, Board-certified in orthopedic surgery. In a March 5, 2012 report, Dr. Ghanma reviewed the medical history and the statement of accepted facts and related findings on examination. He found no objective findings to support that appellant continued to have a cervical, thoracic or lumbar sprain, contusions of the left knee and ankle, left-sided sciatica or disc herniation at L4-5. Dr. Ghanma advised that she had subjective complaints of chronic pain which were not currently associated with objective physical examination findings, which were needed to support her accepted conditions. He concluded that these conditions had resolved. With regard to appellant's disc herniation at L4-5, Dr. Ghanma found that there was insufficient evidence of motor or sensory deficits related to the nerve root at L4-5 or any specific reflex loss associated with that nerve root.

Dr. Ghanma stated that there were no residuals from appellant's work-related conditions, which should have resolved within a period of three to four months after the work injury. He found that she was capable of performing her full work duties without restrictions based on the stated mechanism of injury, her treatment to date, and her current objective examination findings. Dr. Ghanma opined that appellant had fully recovered from her work-related conditions and required no further treatment.

In a report dated March 6, 2012, appellant's treating physician, Dr. Norman W. Lefkowitz, Board-certified in neurology and pain management, stated that appellant continued to have neck pain, low back pain, left knee pain, left ankle pain and secondary headaches. He advised that she was currently not working and was unable to return to work at any position due to her injuries. In an April 9, 2012 report, Dr. Lefkowitz reiterated his findings and conclusions.

On April 11, 2012 OWCP found a conflict in the medical opinion between Dr. Lefkowitz and Dr. Ghanma as to whether appellant had residuals from her accepted conditions. It referred her to Dr. Sheldon Kaffen, Board-certified in orthopedic surgery, for a referee medical examination.

In a CA-17 form report dated May 14, 2012, Dr. Lefkowitz listed that appellant could return to work for four hours per day with restrictions. On May 16, 2012 appellant accepted the employing establishment's offer to work at a modified letter carrier job for four hours per day.

In a June 27, 2012 report, Dr. Kaffen related that he examined appellant on June 11, 2012. He found that there were no objective findings to establish that her work-related conditions were still active or causing symptoms. Dr. Kaffen advised that the sprains of the cervical, thoracic and lumbar regions of the back were soft tissue injuries which resolved within two to three months. He stated that the contusions of the left ankle and left knee were also soft tissue injuries which would have resolved since the date of injury. On examination Dr. Kaffen stated that appellant had no objective findings to support that she suffered from the accepted conditions of left-sided sciatica and herniated disc at L4-5.

Dr. Kaffen determined that appellant no longer had residuals of the accepted conditions related to the April 25, 2011 employment injury. He stated that her work-related conditions had resolved and that she was capable of returning to her date-of-injury job as a letter carrier. Dr. Kaffen concluded that no further medical treatment would be necessary or appropriate.

A time analysis form dated July 3, 2012 indicated that appellant stopped work on June 27, 2012. She filed several CA-7 forms for wage-loss compensation beginning June 26, 2012.

By letter dated July 9, 2012, OWCP informed appellant that it appeared she was claiming a material change or worsening of her condition; *i.e.*, a recurrence of disability. It requested that she submit factual and medical evidence in support of the claim. OWCP advised appellant that the evidence it received was insufficient to establish her recurrence claim because Dr. Lefkovitz, her treating physician, had not provided a report which contained objective findings or medical reasoning to establish that her accepted conditions worsened such that she could not perform light duty for four hours per day. It asked her to submit a comprehensive, well-rationalized medical report demonstrating a causal relationship between her current disability and her original work injury.

Appellant submitted additional CA-7 forms claiming continuing total disability. OWCP continued to pay her wage-loss compensation for four hours a day.

In a letter received on July 19, 2012, appellant stated that she was claiming a recurrence of disability. After returning to work on May 16, 2012, she drove a mail vehicle for four hours a day but continued to experience left knee, neck and back pain. Appellant stated that Dr. Lefkovitz restricted her from driving and casing for more than two hours per day on June 7, 2012. She asserted that two weeks later she became unable to perform work.

On July 30, 2012 OWCP issued a notice of proposed termination of compensation. It advised that the weight of the medical evidence, as represented by Dr. Kaffen's impartial opinion, established that her accepted conditions had ceased and that she had no work-related residuals stemming from the conditions.

In an August 30, 2012 report, Dr. Lefkowitz stated that he released appellant to return to part-time work on May 16, 2012. He examined her on June 7, 2012 at which time she stated that she was only allowed to do mail deliveries during her four-hour work shift and was not offered office work. Dr. Lefkowitz related that being in the truck constantly and pulling the emergency brake was starting to cause pain, but it had subsided. Based on this history, he restricted her from driving more than two hours a day. On June 26, 2012 appellant had complaints of pain in her neck, upper and lower back, left knee and right and left leg. Dr. Lefkowitz advised that her condition had worsened since her June 7, 2012 visit and that she was able to perform her duties for a short period of time before the symptoms returned. He opined that in order for appellant to return to work she needed additional treatment and rest so that her symptoms could subside.

In a Form CA-17 dated August 30, 2012, Dr. Lefkovitz stated that appellant could return to work for eight hours per day. Appellant returned to full duty on September 5, 2012.

By decision dated September 7, 2012, OWCP terminated appellant's compensation benefits, finding that Dr. Kaffen's impartial opinion represented the weight of the medical evidence. It noted that she had submitted evidence which listed new work factors as the reason for her disability. Appellant stated that driving her vehicle four hours a day when she returned to work on May 16, 2012 caused increased pain and an inability to work, which did not constitute a recurrence of disability. OWCP advised her to file a claim for a new injury related to the work factor of driving a vehicle four hours a day. It noted that Dr. Lefkowitz found on August 30, 2012 that she could return to work without restrictions as of September 5, 2012 and made no reference to the July 30, 2012 notice of termination. OWCP found that Dr. Lefkowitz's reports were not sufficient to overcome the special weight of medical opinion accorded Dr. Kaffen.

By letter dated September 10, 2012, appellant, through her representative, requested an oral hearing, which was held on December 12, 2012. At the hearing, appellant's attorney argued that OWCP did not terminate benefits on the grounds that her condition had resolved; rather, it determined that an intervening incident had occurred and advised her to file a new claim. He contended that OWCP should develop the new claim for a recurrence of disability. Counsel sought compensation for all time for wage loss appellant claimed since June 2012.

In a November 5, 2012 report, Dr. Guang Yang, Board-certified in physical medicine and rehabilitation, noted that appellant had complaints of lumbar spine and left knee pain. He noted that she was on a pain medication regimen to help her maintain gainful employment and be more physically active. Dr. Yang related that appellant had to call off work on that date. In a December 31, 2012 report, he reiterated his previous findings. Dr. Yang stated that appellant's current pain medication regimen was working appropriately and that she was currently employed full time as a letter carrier. Appellant related that her current pain treatment plan was allowing her to maintain gainful employment and to be more physically active. She continued to experience left knee pain, occasional swelling and low back pain.

By decision dated February 25, 2013, an OWCP hearing representative affirmed the September 7, 2012 termination decision.²

LEGAL PRECEDENT -- ISSUE 1

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.³ Following a proper termination of compensation benefits, the burden of proof shifts back to claimant to establish continuing employment-related disability.⁴

² The hearing representative stated that OWCP had yet to issue a formal decision regarding the claimed June 26, 2012 recurrence of disability. She noted that the September 7, 2012, decision correctly stated that the evidence submitted suggested a new occupational exposure beginning May 16, 2012, for which the claimant should file a new claim. The hearing representative instructed OWCP to issue a formal decision regarding the claimed recurrence following the return of the case record.

³ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

⁴ *John F. Glynn*, 53 ECAB 562 (2002).

Section 8123(a) provides that, if there is a 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.⁵ It is well established that, when 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.⁶

ANALYSIS -- ISSUE 1

OWCP determined that a conflict in medical opinion evidence existed between appellant's treating physician, Dr. Lefkowitz, and its second opinion physician, Dr. Ghanma, as to whether appellant had residuals of her April 25, 2011 injury, as of April 2012. It referred appellant to Dr. Kaffen for an impartial medical evaluation.

In his June 27, 2012 report, Dr. Kaffen found that appellant had no residuals from her accepted conditions stemming from the April 25, 2011 employment injury. He found that she had no objective findings supporting that she continued to have symptoms from these conditions. Dr. Kaffen advised that cervical, thoracic and lumbar sprains were soft tissue injuries which should have resolved without treatment within two to three months and that left ankle and left knee contusion were also soft tissue injuries which should have resolved since the date of injury. He asserted that appellant had no objective findings to indicate that she had residuals from her left-sided sciatica and herniated disc at L4-5 conditions. Dr. Kaffen concluded that all of her work-related conditions had resolved, that she was capable of returning to her job as a letter carrier, and that she required no further treatment. OWCP relied on Dr. Kaffen's opinion in its September 7, 2012 decision, finding that appellant had no continuing disability or impairment causally related to her conditions of cervical, thoracic, and lumbar strains, left knee and ankle contusions, left sciatica and herniated disc at L4-5.

The Board finds that Dr. Kaffen's impartial opinion negates a causal relationship between appellant's continuing conditions and disability related to her employment. The medical evidence establishes that appellant no longer has any residuals from her accepted conditions of cervical, thoracic, and lumbar strains, left knee and ankle contusions, left sciatica and herniated disc at L4-5. Dr. Kaffen's opinion is sufficiently probative, rationalized and based upon a proper factual background. Therefore, OWCP properly accorded Dr. Kaffen's opinion the special weight of an impartial medical examiner.⁷ The Board therefore finds that Dr. Kaffen's opinion constituted the weight of medical opinion and supports OWCP's September 7, 2012 decision to deny any entitlement to continuing compensation based on her accepted conditions.

⁵ *Regina T. Pellecchia*, 53 ECAB 155 (2001).

⁶ *Jacqueline Brasch (Ronald Brasch)*, 52 ECAB 252 (2001).

⁷ *Gary R. Seiber*, 46 ECAB 215 (1994).

LEGAL PRECEDENT -- ISSUE 2

Following a proper termination of compensation benefits, the burden of proof shifts back to the claimant to establish continuing employment-related disability.⁸

ANALYSIS -- ISSUE 2

Appellant subsequently requested an oral hearing and submitted the November 5 and December 31, 2012 reports from Dr. Yang. These reports stated findings on examination, noted complaints of lumbar spine and left knee pain, and noted that appellant was undergoing a pain management program. However, Dr. Yang did not present an opinion regarding whether appellant had any continuing disability causally related to her accepted conditions. He did not provide a well reasoned and sufficiently supported opinion that would vitiate OWCP's September 7, 2012 determination that appellant did not have any employment-related disability or residuals stemming from her accepted cervical, thoracic, and lumbar strains, left knee and ankle contusions, left sciatica and herniated disc at L4-5 conditions. Thus the Board will affirm OWCP's hearing representative's February 25, 2013 decision.⁹

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate compensation benefits. Appellant has not met her burden to establish continuing disability.

⁸ *John F. Glynn*, 53 ECAB 562 (2002).

⁹ The Board notes that OWCP's hearing representative directed that OWCP consider a separate claim based on recurrence of disability, as OWCP did not directly consider a claim based on this issue and did not make findings or issue a decision based on this claim. This issue is presently pending before OWCP and will not be discussed in the instant decision.

ORDER

IT IS HEREBY ORDERED THAT the February 25, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 16, 2013
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