

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

W.F., Appellant

and

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

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**Docket No. 12-1475
Issued: January 29, 2013**

Appearances:

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 28, 2012 appellant, through her attorney, filed a timely appeal from an April 12, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to 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 appellant established that she had an employment-related disability or condition after May 9, 2010 due to her accepted conditions.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board.² In a January 23, 2012 decision, the Board found that OWCP met its burden of proof to terminate appellant's monetary compensation benefits effective May 9, 2010 based on the opinion of her attending physician, Dr. Dennis Ivill, a Board-certified physiatrist. Although appellant continued to have some objective residuals of her work-related conditions, he opined that she was able to work full duty based on his care of her as well as his review of appellant's physical activity, which included video surveillance. The Board noted that there was no other medical opinion of record which opposed Dr. Ivill's opinion that she could perform full-duty work. The facts of the Board's prior decision are incorporated herein by reference.

In a February 24, 2012 letter, appellant, through counsel, requested reconsideration, asserting that medical records and reports from Dr. William C. Murphy, an osteopath, established that she had residuals of her work injury and could not return to her regular work. She asserted that there was a conflict between the attending physicians and OWCP's referral physicians. A December 9, 2011 letter was referenced, in which counsel requested reconsideration of OWCP's December 27, 2010 termination decision and that the appeal pending before the Board be dismissed.³

The medical evidence submitted in support of the request for reconsideration consisted of evidence previously of record and new diagnostic testing, which included a cervical magnetic resonance imaging (MRI) scan dated January 12, 2010, foot and ankle x-rays dated June 2, 2010, hospital records dated October 11, 2010 and electromyogram (EMG) studies dated July 25 and August 29, 2011.

In a May 23, 2011 report, Dr. Murphy reported that appellant was seen for an initial evaluation and had sustained injuries to her neck and low back as a result of a lifting incident at work on July 29, 2000. He reviewed several medical records and stated that additional records would be reviewed when available. Dr. Murphy noted that appellant wished to transfer her care to him and had asked for another opinion regarding her condition. He set forth examination findings and provided an impression of cervical and lumbar disc disease with multilevel herniations and clinical evidence of cervical and lumbar radiculopathy. Dr. Murphy scheduled appellant for a functional capacity examination (FCE) and indicated that she might benefit from an updated MRI scan and electromyographic studies.

In June 27, 2011 report, Dr. Murphy noted appellant's right elbow pain symptoms were aggravated by lifting, pushing, pulling and carrying. He provided an impression of chronic cervical and lumbar disc disease with myofascial pain and right lateral epicondylitis. On August 29, 2011 Dr. Murphy noted that appellant's complaints included neck and low back pain, bilateral elbow and shoulder pain and that she had some relief with her last injection in the

² Docket No. 11-1258 (issued January 23, 2012). On July 28, 2000 appellant, a mail carrier, was injured when a large box fell on the middle of her back. OWCP accepted the claim for a cervical sprain, lumbosacral sprain and an aggravation of lumbar degenerative disc disease. Appellant returned to full-time limited duty for short periods before stopping work completely on March 13, 2001.

³ On April 27, 2011 appellant filed her prior appeal with the Board from the December 27, 2010 OWCP decision affirming the termination of her monetary benefits. Counsel's December 9, 2011 letter was addressed to OWCP.

elbow. He indicated that the electrodiagnostic study performed that day indicated right L4 radiculopathy and chronic left L3-4 nerve root irritation with no evidence of peripheral polyneuropathy, entrapment neuropathy, plexopathy or myopathy. In an October 31, 2011 report, Dr. Murphy reviewed the results of appellant's October 14, 2011 FCE. He noted that she reported significant pain issues throughout the test and was not able to fully participate. Dr. Murphy stated that appellant had difficulty performing many of the activities which would be required for the work force, including grasping, lifting, pushing, pulling and carrying. Based on his experience of performing and interpreting FCEs and as a physical therapist and a review of the raw data, he opined that she would have difficulty performing any gainful employment. Dr. Murphy stated that appellant was disabled from all gainful employment and that the disability was permanent.

By decision dated April 12, 2012, OWCP denied modification of its previous decision.

LEGAL PRECEDENT

By its January 23, 2012 decision, the Board found that OWCP met its burden of proof to terminate appellant's monetary compensation benefits effective May 9, 2010 on the grounds that her attending physician, Dr. Ivill found that she was able to perform full-duty work. A decision of the Board is final upon expiration of 30 days from the date of the decision.⁴

As OWCP met its burden of proof to terminate monetary compensation benefits effective May 9, 2010, the burden shifted to appellant to establish that she had any continuing disability causally related to her accepted employment injuries.⁵ To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such a causal relationship.⁶ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁷ Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁸

⁴ 20 C.F.R. § 501.6(d). There is no indication in the case record that appellant filed a petition for reconsideration of the Board's January 23, 2012 decision pursuant to 20 C.F.R. § 501.7. *See W.M.*, Docket No. 11-1005 (issued November 23, 2011).

⁵ *See Joseph A. Brown, Jr.*, 55 ECAB 542 (2004). The accepted injuries in this case are a cervical sprain, lumbosacral sprain and aggravation of lumbar degenerative disc disease stemming from a July 28, 2000 work injury.

⁶ *Jennifer Atkerson*, 55 ECAB 317 (2004).

⁷ *Id.*

⁸ *Leslie C. Moore*, 52 ECAB 132 (2000); *Victor J. Woodhams*, 41 ECAB 345 (1989).

ANALYSIS

The Board finds that appellant submitted insufficient medical evidence with her February 24, 2012 reconsideration request to establish that she continued to be disabled after May 9, 2010 due to the July 28, 2000 work injury. The Board notes that she remains entitled to medical benefits for her July 28, 2000 work injury.

With her reconsideration request, appellant submitted several diagnostic studies which pertain to her accepted conditions with the exception of the June 2, 2010 foot and ankle x-rays. The diagnostic studies are insufficient to meet her burden as they contain no opinion as to the cause of the diagnosed conditions and 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.⁹

Dr. Murphy's opinion is of diminished probative value as his reports do not contain sound medical reasoning establishing that appellant was totally disabled after May 9, 2010 due to the accepted conditions caused by the July 28, 2000 employment injury.¹⁰ Dr. Murphy first examined her on May 23, 2011, almost 11 years after her work injury. He submitted a number of reports dated May 23 to October 31, 2011. In his May 23, 2011 report, Dr. Murphy reported that appellant sustained injuries to her neck and low back as a result of a lifting incident at work and that he reviewed a number of her medical records. However, he fails to provide an accurate history of injury or exhibit a complete and accurate factual and medical background of appellant's case. The record reflects that appellant was injured when a large box fell on the middle of her back, not a lifting incident as reported by Dr. Murphy and there is no indication what medical records he reviewed. While Dr. Murphy opined that appellant had several conditions and that she was disabled from all gainful employment and that, such disability was permanent, his opinion is conclusory as he does not offer an opinion providing medical rationale as to how or why those disabling conditions are due to the July 28, 2000 work injury. He did not explain the reasons why the 2000 work injury caused continuing disabling residuals, especially considering that she had not worked for almost 10 years. As such, Dr. Murphy's opinion is entitled to little probative value and is insufficient to meet an employee's burden of proof to establish that appellant continues to have work-related disability due to the accepted conditions.¹¹

On appeal, appellant's counsel asserts that she continued to be disabled due to the employment injury. However, the reports submitted on reconsideration are entitled to little probative value and, as appellant did not provide a rationalized medical opinion on causal relationship, she did not meet her burden of proof to establish that she continues to have work-related disability due to the accepted July 28, 2000 work injury. Appellant's counsel further argues the medical evidence from Dr. Murphy creates a conflict in medical opinion. However, for the reasons noted above, Dr. Murphy's reports are entitled to little probative value. Furthermore, both Dr. Murphy, who supports causal relationship, and Dr. Ivill, whose opinion

⁹ *Willie M. Miller*, 53 ECAB 697 (2002).

¹⁰ *Sandra D. Pruitt*, 57 ECAB 126 (2005).

¹¹ *S.S.*, 59 ECAB 315 (2008).

OWCP relied upon in terminating appellant's monetary compensation benefits, are treating physicians. For a medical conflict to arise under section 8123(a) of FECA, there must be a disagreement between a government physician and a physician for the employee.¹² As both of these physicians were appellant's physicians, there is no medical conflict under section 8123(a).

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 appellant did not establish that she had any continuing employment-related disability after May 9, 2010 causally related to the July 28, 2000 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the April 12, 2012 decision of the Office of Workers' Compensation decision is affirmed.

Issued: January 29, 2013
Washington, DC

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

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

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

¹² 5 U.S.C. § 8123(a). *See F.S.*, Docket No. 09-2337 (issued September 2, 2010) (as the disagreement arose between two treating physicians and not between a treating physician and a physician for the government as contemplated by 5 U.S.C. § 8123(a), the Board found that there was no conflict in medical opinion).