

aggravation of lumbar degenerative disc disease at L4-5.² It also accepted the aggravation of lumbar disc disease at L4-5 based upon the May 29, 2007 report of Dr. William A. Somers, a Board-certified orthopedic surgeon and OWCP referral physician. Appellant stopped work on September 29, 2010 due to the light-duty assignment being withdrawn under the National Reassessment Program (NRP). She filed a recurrence claim which was accepted by decision dated November 3, 2010. Appellant was paid wage loss and medical benefits.

On July 27, 2011 OWCP referred appellant for a second opinion medical examination with Dr. Edward Mulcahy, a Board-certified orthopedic surgeon. In a July 21, 2011, report, Dr. Mulcahy noted the statement of accepted facts and referenced appellant's history of injury and treatment. Low back examination showed no palpable paravertebral muscle spasm. Forward flexion was to 50 degrees with some decrease in the reversal of the lumbar lordosis. Lateral bending was full to the right side and slightly restricted to the left producing some right low back and upper buttock pain. Straight leg raising was positive bilaterally in the sitting position and deep tendon reflexes (DTR) were equal bilaterally. Appellant had good motor strength in the lower extremities, she was able to step forward on her heels and toes without difficulty, there was no sensory loss and no atrophy. The cervical spine showed some mild decrease in right lateral cervical rotation but was otherwise normal. Regarding objective findings, Dr. Mulcahy explained that they were limited to some mild decrease in forward flexion and left lateral bending of the lumbar spine. He indicated that the lumbar sprain and aggravation of the degenerative L4-5 disc disease had resolved. Dr. Mulcahy advised that they would "likely have resolved within a few months after the work injury." He noted that the records of early medical treatment within the first year of the work injury were not provided but that the first results from an orthopedic surgeon in October 2006 showed no positive physical findings and straight leg raising and neurological examinations were negative. Dr. Mulcahy opined that there was no clinical evidence to indicate that the injury of July 27, 2005 caused a material worsening of the underlying degenerative L4-5 disc. He indicated that the MRI scan from September 26, 2005 showed disc desiccation with bulging but did not indicate any acute injury to that disc. Dr. Mulcahy opined that appellant's mild decrease in range of motion of her lumbar spine on examination would be attributed to the natural progression of her underlying condition. He further noted that the injury was a temporary aggravation of the underlying degenerative disc disease and she would have been expected to return to her previous physical status within a few months after the aggravation. Dr. Mulcahy opined that appellant had fully recovered from her work injuries and that she had no restrictions from her regular work based on the temporary aggravation caused by the July 27, 2005 injury although she would have some restrictions based on her underlying degenerative disc condition.

² OWCP accepted the aggravation of lumbar disc disease at L4-5 based on the May 29, 2007 report of Dr. William A. Somers, a Board-certified orthopedic surgeon and OWCP referral physician. In noting the acceptance of degenerative disc disease, OWCP inadvertently noted the diagnosis code ICD-9 722.10, which is for displacement of lumbar intervertebral disc without myelopathy. Thereafter, certain OWCP documents referred to displacement of lumbar intervertebral disc without myelopathy as an accepted condition. However, the context of the record clearly indicates that aggravation of lumbar disc disease at L4-5 is the accepted condition and that references to displacement of lumbar intervertebral disc without myelopathy are a ministerial and harmless error.

On October 27, 2011 OWCP proposed to terminate appellant's benefits based on the report of Dr. Mulcahy, which established that the residuals of the work injury of July 27, 2005 had ceased. Appellant was given 30 days to submit additional evidence or argument.

OWCP received a duplicate copy of a previously submitted report dated April 10, 2009 from Dr. Nzingha J. White, a Board-certified family practitioner. In a May 3, 2010 report, Dr. White noted that appellant continued with physical therapy and was working sedentary light duty. He recommended continued physical therapy. In a previously submitted September 3, 2010 report, Dr. Kimberly Burrows, a Board-certified pediatrician, diagnosed back pain which was likely degenerative disc disease. In an October 22, 2010 report, she noted that appellant continued with chronic back pain and degenerative disc disease. In a March 14, 2011 report, Dr. Burrows repeated her diagnosis.

Dr. Elizabeth Gersuk, a physiatrist, noted that, in a February 17, 2011 report, appellant had chronic low back pain due to degenerative disc disease. She advised that appellant reached maximum medical improvement. Dr. Gersuk indicated that, based upon functional capacity evaluation (FCE) results, appellant would not be able to return to her prior position.

In an October 12, 2011 report, Dr. Michael Lee, a physiatrist, noted that appellant was seen for chronic low back pain. He examined appellant and noted that she was scheduled for a SI joint injection to relieve her SI pain and also scheduled for right trochanteric bursitis injection due to examination findings consistent with trochanteric bursitis.

In a November 3, 2011 report, Dr. Lee provided a bilateral SI joint injection. In a November 16, 2011 report, he noted that appellant was seen for chronic low back pain. Dr. Lee examined her and diagnosed chronic low back pain, degenerative disc disease, most notable at L4-5 and SI joint dysfunction. He opined that the condition had not resolved and was still present and disabling. Dr. Lee advised that appellant was unable to carry out her previous full-work duties but would be able to work at a lighter duty. He explained that it was difficult to determine the permanency of her injuries. Dr. Lee noted it might "simply be a temporary sequelae of the natural history of her acute back pain. However, it is most likely partially permanent." He advised that appellant continued to have significant disability disabling her from working at her previous level and she was not at her preinjury level. However, Dr. Lee explained that appellant was able to perform some type of job with restrictions to include no heavy lifting. He recommended continued medical management, injection management, weight reduction and exercise.

By decision dated December 1, 2011, OWCP terminated appellant's compensation benefits effective that date on the grounds that she had no continuing residuals of her employment injury. It relied on Dr. Mulcahy's report as the weight of the medical evidence. OWCP found the medical reports submitted by appellant to be insufficient to outweigh the report of Dr. Mulcahy.

Appellant requested a hearing, which was held on April 4, 2012. She argued that the report of the second opinion physician was based on an incomplete statement of accepted facts (SOAF).

In a letter dated April 4, 2012, appellant's attorney argued that OWCP erred relying upon Dr. Mulcahy's report to terminate benefits. He referred to *L.P.*³ Counsel argued that the Board reversed OWCP's decision terminating benefits because the physician failed to explain when the claimant's condition had resolved, did not refer to contemporaneous medical records indicating that the accepted injury had resolved and did not explain how he differentiated between progressive degenerative disc disease and the effects of the accepted injury.

By decision dated June 26, 2012, an OWCP hearing representative affirmed the December 1, 2011 decision. It also noted appellant's attorney's arguments pertaining to the SOAF and noted that his argument was without merit as the second opinion physician's report was based upon a consistent SOAF.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.⁴ 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.⁵ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.⁶ 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.⁷

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.⁸

OWCP's procedure manual provides as follows: When the district medical adviser, second opinion specialist or referee physician renders a medical opinion based on a SOAF which is incomplete or inaccurate or does not use the SOAF as the framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether.⁹

³ Docket No. 08-1648 (issued August 28, 2009).

⁴ *Curtis Hall*, 45 ECAB 316 (1994).

⁵ *Jason C. Armstrong*, 40 ECAB 907 (1989).

⁶ *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

⁷ *Calvin S. Mays*, 39 ECAB 993 (1988).

⁸ *See Connie Johns*, 44 ECAB 560 (1993).

⁹ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3 (October 1990); *Willa M. Frazier*, 55 ECAB 379 (2004).

ANALYSIS

OWCP accepted that appellant sustained a lumbar sprain and aggravation of lumbar degenerative disc disease at L4-5. It paid medical benefits and subsequently referred her to Dr. Mulcahy for a second opinion. Relying on his report as the weight of medical evidence, OWCP terminated appellant's wage loss and medical benefits effective December 1, 2011.

The Board finds however that the report of the second opinion physician, Dr. Mulcahy, is insufficient to meet OWCP's burden of proof. The Board finds that, contrary to appellant's contention, the SOAF is accurate. The Board properly notes the accepted conditions of lumbar strain and aggravation of degenerative disc disease at L4-5. Dr. Mulcahy's report fails where he noted that the medical records of any treatment or evaluation in the first year after the work injury were not in the record. Whether they were in the record or whether he simply did not review them is not clear. What is clear is he did not consider them. There are numerous medical records contemporaneous with the injury in the record dating from July 27, 2005, the date of injury, to October 4, 2006. It is well established that medical reports must be based on a complete and accurate factual and medical background, and medical opinions based on an incomplete or inaccurate history are of little probative value.¹⁰

The Board also finds that Dr. Mulcahy's conclusion that lumbar sprain and aggravation of the degenerative L4-5 disc disease would "likely have resolved within a few months after the work injury," is inconsistent with the facts. On November 3, 2010 OWCP accepted a recurrence of total disability due to continued residuals from her work injury which prevented her from performing her date-of-injury position. Thus, Dr. Mulcahy's report is again inconsistent with the factual record. The Board finds that his report is insufficient to meet OWCP's burden of proof to terminate compensation and medical benefits effective December 1, 2011.

CONCLUSION

The Board finds that OWCP did not meet its burden of proof to terminate appellant's benefits effective December 1, 2011.

¹⁰ *Douglas M. McQuaid*, 52 ECAB 382 (2001).

ORDER

IT IS HEREBY ORDERED THAT the June 26, 2012 decision of the Office of Workers' Compensation Programs is reversed.

Issued: July 1, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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